Reno Hilton Resorts Corporation d/b/a Reno Hilton *and* United Brotherhood of Carpenters, Western Council of Industrial Workers, AFL–CIO, United Brotherhood of Carpenters and Joiners of America, AFL–CIO–CLC. Cases 32–CA–13390 and 32–CA–13602[1]

December 18, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND TRUESDALE

On February 22, 1995, Administrative Law Judge Michael D. Stevenson issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party filed cross-exceptions and supporting briefs, and the Respondent and the Union filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions as modified and to adopt the recommended Order as modified and set forth in full below.

The Union conducted an organizing campaign among the Respondent's employees during the spring, summer, and fall of 1993. The judge found that, during the course of that campaign, the Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl it violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17* mittees known as quality action teams. The judge recommended dismissal of numerous complaint allegations.[3]

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We affirm the judge's disposition of the great majority of the allegations.[4] We agree, however, with the General Counsel and the Union that the judge erred in failing to find three additional violations of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBU

1. We first find, as the Union urges, that a memorandum dated April 7, 1993, from the Respondent's president, Ronald Hughes, to employees unlawfully threatened employees with unspecified reprisals and implied that supporting the Union was futile. The text of the memo read:

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[1] Case 32–RC–3720 was formerly consolidated with the captioned cases. On March 20, 1995, after the judge's decision issued, the Union filed a motion to sever cases and for leave to withdraw its representation petition. By order dated March 27, 1995, the Board granted the Union's motion and severed and closed Case 32–RC–3720. The Respondent's motion for reconsideration of the Board's action was denied on April 12, 1995. Accordingly, we have deleted the severed case from the caption.

Because the Union has withdrawn its petition and Case 32–RC–3720 has been closed, we find it unnecessary to consider the issues raised by the Union's election objections.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (fiMDBUfl*ERR17*fiMDNMfl1950)fiMDBUfl*ERR17*fiMDNMfl, enfd. 188 F.2d 362 (fiMDBUfl*ERR17*fiMDNMfl3d Cir. 1951)fiMDBUfl*ERR17*fiMDNMfl. We have carefully examined the record and find no basis for reversing the findings.

We find it unnecessary to decide whether the judge correctly found the following violations: *solicitation of grievances*—by Dean Lane (fiMDBUfl*ERR17*fiMDNMflAnn Altaa Fulton and Tom McAllaster)[illegible] by Larry Wong (fiMDBUfl*ERR17*fiMDNMflAntonio Valtierra)fiMDBUfl*ERR17*fiMDNMfl, by Brooke Dunn and Beverly Bates (fiMDBUfl*ERR17*fiMDNMflMarvis Bogard)fiMDBUfl*ERR17*fiMDNMfl; *interrogations*—by Sandy Warbington (fiMDBUfl*ERR17*fiMDNMfl[illegible])fiMDBUfl*ERR17*fiMDNMfl, by Florentino Diaz (fiMDBUfl*ERR17*fiMDNMflSooki Ha)fiMDBUfl*ERR17*fi[illegible] *loss*—by Bill Shad (fiMDBUfl*ERR17*fiMDNMflRamon Carballo)fiMDB[illegible] sary to decide whether the judge erred in failing to find that the quality action teams (fiMDBUfl*ERR17*fiMDNMfldiscussed below)fiMD[illegible] fully conferred on employees or that Supervisor Jan Mooney unlawfully asked employee Baker how she was going to vote. Whether or not the Respondent violated the Act in any of those respects would not materially affect our Order.

[3] In the absence of exceptions, we adopt pro forma the judge's recommended dismissal of the following complaint allegations: *Case 32–CA–13390*: par. 6(fiMDBUfl*ERR17*fiMDNMfle)fiMDBUfl*ERR17*fiMDNMfl, (fiM *13602*: par. 6(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*E (fiMDBUfl*ERR17*fiMDNMfly)fiMDBUfl*ERR17*fiMDNMfl, (fiMDBUfl*ERR17*fiMD

[4] We affirm the judge's finding that Supervisor Terry Bolin subjected union activist McAllaster to the workings of a disparately enforced no-solicitation/no-distribution rule. Contrary to the judge, however, we do not rely on evidence that the Respondent posted antiunion banners in its facility. Absent a showing that a union lacks sufficient means to communicate with employees, an employer does not violate the Act by enforcing a valid no-solicitation rule while engaging in antiunion solicitations of its own. See *Summitville Tiles*, 300 NLRB 64, 66 (fiMDBUfl*ERR17*fiMDNMfl1990)fiMDBUfl*ERR17*fiMDNMfl.

In finding that the Respondent unlawfully prohibited employees from wearing prounion insignia at work, the judge cited, inter alia, the Board's decision in *Windemuller Electric*, 306 NLRB 664 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fiMDNMfl, in which the Board fo prohibited employees from placing union stickers on hardhats owned by the employer. In affirming the judge on this point, we recognize that the Sixth Circuit Court of Appeals declined to enforce the Board's decision in relevant part. *NLRB v. Windemuller Electric*, 34 F.3d 384, 393–395 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17*fiMDNMfl. W decision which, in any event, was based on the employer's ownership of the hardhats and its not having prevented the employees from wearing union insignia on their own clothing. Here, the Respondent does not contend that its refusal to allow employees to wear union insignia was based on any property interest. It argues only that it [illegible] either pro- or anti-[illegible] areas during worktime, and that the policy was evenhandedly enforced. We reject that defense for the reasons stated by the judge.

In exceptions, the Respondent contends that the judge erred in re-[illegible] Supervisor Pok Tong [illegible] Hearsay is not automatically excluded in administrative proceedings. *Alvin J. Bart* [illegible] F.2d 1267 (fiMDBUfl*ERR17*fiMDNMfl2d Cir. 1979)fiMDBUfl*ERR17*fiMDNMfl. In object to the testimony, it was properly admitted. Id. at 243. Finally, Nunez testified that Bothem made similarly coercive remarks to him individually, in English, which he understood.

> As you may have heard, the Carpenters Union is contacting our employees to try to get them to sign union cards. We are dedicated to making the Reno Hilton as successful for our employees as it is for our guests and the company. As a result, the hotel is strongly opposed to the attempts by the Carpenters Union to come into our hotel. That union can't do anything for you that you cannot do better for yourselves. The union would not benefit you in any way and could hurt you seriously. It could interfere with our ability to make this the best possible place to work and block free communication between us.
>
> What this boils down to is: refuse to sign union authorization cards and avoid a lot of unnecessary trouble. You will always do better with us without a union, which can't and won't do anything for you except jeopardize your jobs. If you want job security and a good place to work under the best terms and conditions, reject the union.

The judge found that Hughes' communication was not unlawful. He cited *Airporter Inn Hotel*, 215 NLRB 824 (fiMDBUfl*ERR17*fiMDNMfl1974)fiMDBUfl*ERR17*fiMDNMfl, in which the Board found that the employer's communication, which contained language similar to the second paragraph of Hughes' memo, was lawful.

We disagree with the judge's conclusion. The Board has held that although employers' warnings of ''serious harm'' that may befall employees who choose union representation are not unlawful in and of themselves, they may be unlawfully coercive if uttered in a context of other unfair labor practices that ''impart a coercive overtone'' to the statements. *Community Cash Stores*, 238 NLRB 265, 269 (fiMDBUfl*ERR17*fiMDNMfl1978)fiMDBUfl*ERR17*fiMDNMfl, citing *Greensboro Hosiery Mills*, 162 NLRB 1275, 1276 (fiMDBUfl*ERR17*fiMDNMfl1967)fiMDBUfl*ERR17*fiMDNMfl, enf. denied in relevant part 398 F.2d 414 (fiMDBUfl*ERR17*fiMDNMfl6th Cir. 1968)fiMDBUfl*ERR17*fiMDNMfl. We find such a context here. The Respondent violated the Act repeatedly. Its unlawful acts included threatening an employee that the hotel would close before the Union could come in, stating that union supporters could be fired, promising to grant benefits if the Union was rejected, threatening to withhold or take away benefits if the Union was certified, granting benefits during the union organizing campaign, and indicating that it would reject any union demands in order to show how ''stupid'' unions are. The coercive effect of Hughes' memo is apparent when it is read against the backdrop of those unfair labor practices, which give both specificity and force to Hughes' otherwise vague assertions that the Union would not benefit employees, could hurt them seriously, and might jeopardize their jobs.[5] We therefore find that the Respondent violated the Act in this respect as alleged in the complaint.

2. We also find, contrary to the judge, that the Respondent unlawfully granted benefits to employees when Hughes announced in a memo to employees dated May 14 that layoffs occasioned by an upcoming renovation program would be implemented on the basis of seniority and that the board of adjustment, which had existed under the Respondent's predecessor, Bally's, but which had been discontinued when the Respondent took over the facility, had been restored.[6] The judge found that, in both respects, the Respondent had changed its previous policies, and that the General Counsel had established a prima facie case based on the timing of the announcement. He also found, however, that the Respondent had rebutted the prima facie case. The judge reasoned that Hughes' memo contained other announcements that were not uniformly positive and did not uniformly enhance employees' benefits.[7] He found that the memo was ''a common sense response to employee questions not particularly related to the union campaign.''[8] The judge also noted that the board of adjustment was discontinued by Hughes' predecessor as president, and that the unpopular PEP program (fiMDBUfl*ERR17*fiMDNMflunder which layoffs were implemented according to seniority)fiMDBUfl*ERR17*fiMDNMfl was also his creation. In these circumstances, the judge reasoned, it made no sense to preclude Hughes from changing the two policies for the good of the Respondent. The General Counsel has excepted to the judge's dismissal of these allegations. We find merit to the exception.

Unlike the judge, we find that the Respondent has failed to demonstrate that it would have granted these benefits had it not been for the union organizing campaign.[9] The Respondent had operated without either a seniority based layoff system or the board of adjustment for several months, and in its answering brief it does not suggest any specific reason why it was necessary or even beneficial for the Company to change either policy when it did (fiMDBUfl*ERR17*fiMDNMflor at all)fiMDB May 14 memo did not refer to the Union, we think that, in the context of the Respondent's other unfair labor practices, including promises of benefits if the employees rejected the Union and the granting of a merit wage increase program, reasonable employees

[5] In *Airporter Inn Hotel*, supra, by contrast, no other unfair labor practices were found. And even though the court of appeals in *Greensboro Hosiery Mills*, supra, declined to enforce the Board's decision concerning the ''serious harm'' statement, it noted that only isolated 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR1 violations were not isolated, and many were directly related to the statements in Hughes' memo.

[6] The board of adjustment was an internal arbitration panel used to settle disputes. It was abolished soon after the Respondent took over the facility in 1992.

[7] The memo did, however, state that the PEP (fiMDBUfl*ERR17*fiMDNMflprofit enh program)fiMDBUfl*ERR17*fiMDNMfl, which had led to numerous layoffs and considera ety among employees, had been concluded. The ending of PEP is not alleged to have violated the Act.

[8] The memo did not mention the Union.

[9] See *American Sunroof Corp.*, 248 NLRB 748 (fiMDBUfl*ERR17*fiMDNMfl1980)fi on other grounds 667 F.2d 20 (fiMDBUfl*ERR17*fiMDNMfl6th Cir. 1981)fiMDBUfl*ERR

would have viewed the new benefits as having been conferred by the Respondent in order to undermine support for the Union. Accordingly, we find that the Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl granting these two benefits.

3. We further agree with the General Counsel that Hughes made unlawful statements in a series of speeches to employees on November 2 (fiMDBUfl*ERR17*fiMDNMfl2 days before the election)fiMDBUfl*ERR17*fiMDNMfl. In the speeches, Hughes reminded the employees of the benefits the Respondent had already granted (fiMDBUfl*ERR17*fiMDNMflincluding the unlawfully dominated 'quality action teams, which we discuss below)fiMDBUfl*ERR17*fiMDNMfl, and stated:

> Hilton has given you all an opportunity to demonstrate your commitment and value. I'm asking you now to give Hilton a chance to show its commitment to you. Vote no . . . Remember in a year from now you can bring this union, or any other union, in here. But right now, give Hilton and give me a chance, and I'll deliver.

Relying on *Hyatt Regency Memphis*, 296 NLRB 259 fn. 2 (fiMDBUfl*ERR17*fiMDNMfl1989)fiMDBUfl*ERR17*fiMDNMfl, and *Agri-International, Inc.*, 271 NLRB 925 (fiMDBUfl*ERR17*fiMDNMfl1984)fiMDBUfl*ERR17*fiMDNMfl, the judge found Hughes' remarks protected by Section 8(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*ERR17*fiMDNMfl. We disagree and reverse. In our view, Hughes' request for a chance to ''deliver,'' taken in the context of his earlier references to benefits already bestowed, and in the broader context of the Respondent's unlawful promises of benefits, grants of benefits, and implied promises to remedy grievances, would be interpreted by reasonable employees as an implied promise either to grant additional benefits or to remedy employees' grievances, or both.[10] Accordingly, we find that Hughes' statements violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl.

4. The complaint alleges that the Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl antiunion rally through which employees were forced to pass on their way to vote and by videotaping employees as they were on their way to vote. The judge found, and we agree, that the rally was not coercive, but he did not rule on the videotaping allegation. The Union argues that the judge should have found the videotaping unlawful. We reject that argument, which is based entirely on the Respondent's photographing and videotaping of a prounion rally earlier on election day—conduct that was not alleged in the complaint to be unlawful, and that the General Counsel, in his exceptions, does not contend was unlawful.[11] The conduct alleged in the complaint—videotaping employees as they entered to vote—is not substantiated in the record. The Respondent videotaped employees as they entered the facility through the employees' entrance. That entrance, however, was several hundred feet away from the voting area, which was far inside the building. As they entered the facility, the employees were doing nothing they would not normally have done on a workday; they were not engaged in protected activity when they were simply entering the facility. We therefore find that the Respondent's videotaping of the employees as they entered the building was not coercive.

5. Finally, we adopt the judge's finding that Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDB Bothem ordered her housekeeping staff to wear ''Vote No'' T-shirts, but on a rationale different from that offered by the judge. The judge concluded that the incident violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR ployees to declare their sentiments regarding the union campaign and, as a result, constituted unlawful interrogation. The credited testimony, however, indicates that the employees were given no choice but to wear the antiunion T-shirts, thus unlawfully forcing those employees to convey the Respondent's campaign message. As the Board has previously held, ''[t]o require employees to disseminate antiunion literature violates the Section 7 right to engage in union activity or to refrain from engaging in activity for any party during the election campaign.'' *Scientific Atlanta, Inc.*, 278 NLRB 467 (fiMDBUfl*ERR17*fiMDNMfl1986)fiMDBUfl*ERR17*fiMD tice to conform to the violation as found.

The 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR1 The judge found, and we agree, that the Respondent did not violate Section 8(fiMDBUfl*ERR17*fiMDNMfl. tion 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiM tion teams (fiMDBUfl*ERR17*fiMDNMfl'QATs')fiMDBUfl*ERR17*fiM QATs were labor organizations within the meaning of Section 2(fiMDBUfl*ERR17*fiMDNMfl5)fiMDBUfl*ERR17*fiMDNMfl employees participated and which ''dealt with'' the Respondent concerning wages, hours, and other terms and conditions of work. It is clear from the record, as the judge found, that the QATs or their members made proposals or requests concerning those subjects to which the Respondent responded by either accepting or rejecting, and that those actions occurred on more than an isolated or ad hoc basis.[12] The minutes of QAT meetings reveal that proposals, requests, or employee concerns were raised with regard to numerous matters concerning employees' compensation and other employment conditions—safety hazards in the workplace,

[10] See *Hubbard Regional Hospital*, 232 NLRB 858, 870 (fiMDBUfl*ERR17*fiMDNMfl1977)fiMDBUfl*ERR17*fiMDNMfl, enfd. in relevant part 579 F.2d 1251 (fiMDBUfl*ERR17*fiMDNMfl1st Cir. 1978)fiMDBUfl*ERR17*fiMDNMfl. We find the decisions relied on by the judge to be distinguishable from this case. In *Hyatt Regency Memphis*, supra, the general manager's plea for ''a chance'' was qualified by a statement that he could make no promises. 296 NLRB at 269. A similar statement in *Agri-International*, supra, was unaccompanied by any other unlawful or objectionable employer conduct.

[11] In fact, the General Counsel has not excepted in any way to the judge's failure to find the videotaping unlawful.

[12] See *Electromation, Inc.*, 309 NLRB 990 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDB 1148 (fiMDBUfl*ERR17*fiMDNMfl7th Cir. 1994)fiMDBUfl*ERR17*fiMDNMfl; *E. I. du NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (fiMDBUfl*ERR17*fiMDNMfl1959)fiMDBUfl*

equipment needed by employees, employee rotation among jobs, distribution of suites for cleaning, training of new employees, staffing levels, starting times, airflow in working areas, job descriptions, paid sick days, fairness of the wage structure, employees' sharing tips with supervisors—and the Respondent indicated an intention to address those issues, and in some cases took action in response.[13] Although the Respondent correctly notes that most of the topics addressed in QAT meetings apparently did not involve wages, hours, or other terms and conditions of employment, that fact alone does not mean that the QATs are not labor organizations. Section 2(fiMDBUfl*ERR17*fiMDNMfl5)fiMDBUfl*ERR17*fiMDNMfl plainly states that an organization is a labor organization if employees participate in it and if it exists, even *in part*, for the purpose of dealing with the employer concerning those subjects.

Although he found the 8(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl violations alleged, the judge did not discuss the basis for his implicit finding that the Respondent dominated and/or interfered with the formation or administration of the QATs. The record, however, plainly establishes such domination and interference. As the Respondent admits, its general manager, Tony Santo, developed the QATs and created their agendas. Santo testified that the Respondent's management determined the number, size, and structure of the QATs, and paid those employees who attended meetings during their worktime. Management personnel, including Santo himself, participated as members of the QATs. Santo also admitted that either he or the Respondent's president would have the ultimate decision-making power within the QATs, and that management could cancel the QATs at any time. Although employees volunteered for membership on the QATs, and were not selected by management, it is clear that the Respondent thoroughly dominated and interfered with the formation and administration of the QATs.[14]

THE REMEDY[15]

Having found that the Respondent committed a host of violations of the Act, many of which involved the participation of the Respondent's high-ranking management personnel, the judge recommended issuing a broad cease-and-desist order. Because he found that the Respondent engaged in objectionable conduct, the judge recommended setting the results of the election aside and holding a second election. The judge also recommended that the notice to employees be published in Spanish, Chinese, and Tagalog (fiMDBUfl*ERR17*fiMDNM
well as English; that they be signed by either Hughes or Santo; that they be mailed to employees and published in appropriate company publications; and that the Respondent furnish the Union, within 1 year of the decision, a list of the names and addresses of its current employees. The judge, however, declined to order additional extraordinary relief requested by the General Counsel.

The General Counsel excepts to the judge's failure to order the Respondent to afford the Union, for 6 months, access to the Respondent's bulletin boards and other places where notices to employees are pub
lished, to give the Union access to employees in nonwork areas during nonworking time, to allow the Union to be present during any address by the Respondent to employees on the subject of unionization; and to allow the Union to make a 30-minute speech to employees, on worktime, before any Board-conducted election. The General Counsel also excepts to the judge's failure to order the notice to be read personally by either Hughes or another member of the Respondent's executive committee. In addition, the Union has excepted to the judge's failure to order the Respondent to give the Union access to employees in nonwork areas during nonworking time; to allow the Union to be present during any address by the Respondent to employees on the subject of union representation; to allow the Union to make a 1-hour speech to employees before an election; to publish the notice in local newspapers; and to allow a Board agent and a union representative to be present when the notice is read to employees.

On July 26, 1995, the Respondent filed motions to reopen the record and admit additional evidence and to take administrative notice. In the motions, the Respondent points out that the Union, after withdrawing its petition in Case 32–RC–3720, filed a second petition, in Case 32–RC–4028; that an election was held in a unit of employees substantially the same as that sought by the Union in Case 32–RC–3720; that the Union again lost and, as no objections were filed, the Regional Director issued a certification of results of election on July 12, 1995. A free and fair second election having been held, the Respondent argues, the extraordinary access remedies sought by the General Counsel and the Union should not be granted. We agree with the Respondent.[16] For the reasons stated in the Respondent's motions, we find it inappropriate to afford the Union the access to the Respondent's facili-

[13] See G.C. Exhs. 4(fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*ERR17*fiMDNMfl, (fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*ERR17*fiMDNMfl, (fiMDBUfl*E
10(fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*ERR17*fiMDNMfl and (fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*ERR17*fiMDNMfl.

[14] *Electromation*, supra, 309 NLRB at 995.

Having found that the QATs are dominated labor organizations, we shall modify the Order to provide for their disestablishment. See *Carpenter Steel Co.*, 76 NLRB 670 (fiMDBUfl*ERR17*fiMDNMfl1948)fiMDBUfl*ERR17*fiMDNMfl.

[15] We affirm the judge's finding that the Respondent unlawfully prohibited employees from distributing union literature outside the employee entrance to the hotel and unlawfully threatened them with arrest. We note, however, that the judge omitted from his recommended Order any specific provision to remedy this violation. We shall add the appropriate provision to the Order.

[16] We also grant the Respondent's motions to admit into the record and to take administrative notice of the tally of ballots and certification of results of election in Case 32–RC–4028. In this regard, we note that the Board need not await the motion by a party to take administrative notice of its own documents.

ties and employees which the General Counsel and the Union argue for in their exceptions.[17]

The Respondent contends that the Board may not constitutionally require it to publish the notice in company publications. Citing *Passaic Daily News v. NLRB*, 736 F.2d 1543, 1556–1559 (fiMDBUfl*ERR17*fiMDNMfl D.C. Cir. 1984)fiMDBUfl*ERR17*fiMDNMfl, the Respondent argues that its rights under the First Amendment would be violated if it were required ''to publish what it prefers to withhold.'' We find no merit to this position. The Board has included such remedial provisions in numerous cases, with the approval of the courts of appeals.[18] In any event, taken to its logical extreme, the Respondent's argument would apply equally to the Order's requirement that the Respondent post the notice. Both provisions direct the Respondent to ''publish what it prefers to withhold,'' yet no one would seriously contend that the posting provision violates the Respondent's First Amendment free speech rights.[19] We perceive no stronger argument against the provision that the notice be published in appropriate publications of the Respondent.

ORDER

The National Labor Relations Board orders that the Respondent, Reno Hilton Resorts Corporation d/b/a Reno Hilton, Reno, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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plicit and implied promises to rectify them.

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ward the Union and how they intend to vote in the election.

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from their clothing.

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closed before the Union can come in.

(fiMDBUfl*ERR17*fiMDNMfle)fiMDBUfl*ERR17*fiMDNMfl Maint
an oral solicitation/nondistribution policy.

(fiMDBUfl*ERR17*fiMDNMflf)fiMDBUfl*ERR17*fiMDNMfl Granti
erwise have granted during the union organizing campaign, provided that the Respondent is not required to withdraw, vary, or abandon any wage increase or other benefits it may have granted to employees.

(fiMDBUfl*ERR17*fiMDNMflg)fiMDBUfl*ERR17*fiMDNMfl Requ
antiunion button or T-shirt as unlawful interrogation.

(fiMDBUfl*ERR17*fiMDNMflh)fiMDBUfl*ERR17*fiMDNMfl Tellin
to vote in the election.

(fiMDBUfl*ERR17*fiMDNMfli)fiMDBUfl*ERR17*fiMDNMfl Threat
benefits, or unspecified reprisals, if they support the Union.

(fiMDBUfl*ERR17*fiMDNMflj)fiMDBUfl*ERR17*fiMDNMfl Telling
they are showing disloyalty to supervisors and to the hotel.

(fiMDBUfl*ERR17*fiMDNMflk)fiMDBUfl*ERR17*fiMDNMfl Prom
benefits if the Union is defeated.

(fiMDBUfl*ERR17*fiMDNMfll)fiMDBUfl*ERR17*fiMDNMfl Creati
activities are under surveillance.

(fiMDBUfl*ERR17*fiMDNMflm)fiMDBUfl*ERR17*fiMDNMfl Dispa

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[17] Compare *Monfort of Colorado*, 284 NLRB 1429, 1429–1430 (fiMDBUfl*ERR17*fiMDNMfl1987)fiMDBUfl*ERR17*fiMDNMfl, enfd. sub nom. *Food & Commercial Workers v. NLRB*, 852 F.2d 1344 (fiMDBUfl*ERR17*fiMDNMflD.C. Cir. 1988)fiMDBUfl*ERR17*fiMDNMfl, with *Monfort of Colorado*, 298 NLRB 73, 86 (fiMDBUfl*ERR17*fiMDNMfl1990)fiMDBUfl*ERR17*fiMDNMfl, enfd. in relevant part 965 F.2d 1538 (fiMDBUfl*ERR17*fiMDNMfl10th Cir. 1992)fiMDBUfl*ERR17*fiMDNMfl, cited by the General Counsel. *NLRB v. Raytheon Co.*, 398 U.S. 25 (fiMDBUfl*ERR17*fiMDNMfl1970)fiMDBUfl*ERR17*fiMDNMfl, cited by the General Counsel, is inapposite to the issue of the appropriateness of the remedies sought here.

For the same reasons, we find it inappropriate to order the Respondent to furnish a list of employees' names and addresses to the Union, and we shall delete that provision of the judge's recommended Order.

We agree with the judge that the unlawful conduct found here does not warrant ordering the Respondent's top management to read the notice to employees.

[18] See, e.g., *Haddon House Food Products*, 242 NLRB 1057, 1058 (fiMDBUfl*ERR17*fiMDNMfl1979)fiMDBUfl*ERR17*fiMDNMfl, enfd. in relevant part sub nom. *Teamsters Local 115 v. NLRB*, 640 F.2d 392, 401 (fiMDBUfl*ERR17*fiMDNMflD.C. Cir. 1981)fiMDBUfl*ERR17*fiMDNMfl, cert. denied 454 U.S. 827, 837 (fiMDBUfl*ERR17*fiMDNMfl1981)fiMDBUfl*ERR17*fiMDNMfl; *United Dairy Farmers Cooperative Assn.*, 242 NLRB 1026, 1029 (fiMDBUfl*ERR17*fiMDNMfl1979)fiMDBUfl*ERR17*fiMDNMfl, enfd. in relevant part 633 F.2d 1054, 1070 (fiMDBUfl*ERR17*fiMDNMfl3d Cir. 1980)fiMDBUfl*ERR17*fiMDNMfl; *Sambo's Restaurant*, 247 NLRB 777, 778 (fiMDBUfl*ERR17*fiMDNMfl1980)fiMDBUfl*ERR17*fiMDNMfl, enfd. on procedural grounds 641 F.2d 794 (fiMDBUfl*ERR17*fiMDNMfl9th Cir. 1981)fiMDBUfl*ERR17*fiMDNMfl. See also *NLRB v. Weirton Steel Co.*, 183 F.2d 584, 586 (fiMDBUfl*ERR17*fiMDNMfl3d Cir. 1950)fiMDBUfl*ERR17*fiMDNMfl (fiMDBUfl*ERR17*fiMDNMflcourt ordered employer, found in contempt, to publish notice in a company publication)fiMDBUfl*ERR17*fiMDNMfl.

Passaic Daily News v. NLRB, supra, is distinguishable from this case. There, the Board found that the employer, a newspaper, had unlawfully discontinued the column of an employee, and ordered the employer to resume publishing the column. The court declined to enforce the portion of the Board's order requiring the employer to reinstate the column, finding that the order impermissibly interfered with the employer's First Amendment editorial rights. The court relied on *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (fiMDBUfl*ERR17*fiMDNMfl1974)fiMDBUfl*ERR17*fiMDNMfl, in which the Supreme Court found unconstitutional a Florida statute requiring a newspaper that had criticized a political candidate to allow the candidate to reply in the newspaper. In our view, however, the court in *Passaic Daily News v. NLRB*, supra, read *Miami Herald Publishing Co. v. Tornillo*, supra, too broadly, as precluding access to the print media even to rectify wrongdoing by the news media themselves. We find nothing in *Miami Herald Publishing Co. v. Tornillo*, supra, to support that view. As we read *Miami Herald Publishing Co. v. Tornillo*, supra, the Court in affirming the freedom of the press against prior governmental restraint, was rejecting only the theory that robust public debate depends on access to the individual print media, and that newspapers' First Amendment rights must in some instances give way to the competing rights of individuals to make their views known. There was no contention that the newspaper owed Tornillo access to its editorial space in order to remedy any wrongdoing by the newspaper. Indeed, in their concurring opinion, Justices Brennan and Rehnquist stated that they understood the Court's holding to apply only to ''right of reply'' statutes, not to statutes affording defamed plaintiffs an enforceable right to require a guilty newspaper to print a retraction. 418 U.S. at 258. Thus, we do not view *Miami Herald Publishing Co. v. Tornillo*, supra, as precluding the imposition of a *remedial* publication requirement, which, as we have noted, has been approved by several courts. In fact, the D.C. Circuit, which decided *Passaic Daily News v. NLRB*, supra, held in *Teamsters Local 115 v. NLRB*, supra, that the same requirement was ''certainly within the permissible range of Board options.'' 640 F.2d at 401.

[19] The Supreme Court long ago approved the Board's notice posting requirements. See *NLRB v. Express Publishing Co.*, 312 U.S. 426, 438 (fiMDBUfl*ERR17*fiMDNMfl1941)fiMDBUfl*ERR17*fiMDNMfl.

(fiMDBUfl*ERR17*fiMDNMfln)fiMDBUfl*ERR17*fiMDNMfl Union would be futile.

(fiMDBUfl*ERR17*fiMDNMflo)fiMDBUfl*ERR17*fiMDNMfl teams or any other labor organization.

(fiMDBUfl*ERR17*fiMDNMflp)fiMDBUfl*ERR17*fiMDNMfl any such committees of employees or any reorganization or successor to the quality action teams.

(fiMDBUfl*ERR17*fiMDNMflq)fiMDBUfl*ERR17*fiMDNMfl union literature in nonworking areas, and threatening them with arrest if they do not comply with such orders.

(fiMDBUfl*ERR17*fiMDNMflr)fiMDBUfl*ERR17*fiMDNMfl

(fiMDBUfl*ERR17*fiMDNMfls)fiMDBUfl*ERR17*fiMDNMfl or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

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(fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*ERR17*fiMDNMfl of the attached notice marked ''Appendix.''[20] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, as specified in the remedy section of the judge's decision, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. The notices are to be published in the four languages specified in footnote 31 to the remedy.

(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*ERR17*fiMDNMfl to those persons specified in the remedy and include a copy of the notice in all appropriate company publications.

(fiMDBUfl*ERR17*fiMDNMfld)fiMDBUfl*ERR17*fiMDNMfl 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER BROWNING, concurring in part and dissenting in part.

I concur with my colleagues in the vast majority of their analysis of the administrative law judge's disposition of the substantive allegations in the complaint, including the conclusion that the judge erred in failing to find the three additional violations of Section 8(fiMDBUfl*ERR17*fiMDNMfl as noted in the decision. I differ from my colleagues in that I would find two further violations in the conduct alleged by the General Counsel. I also disagree with my colleagues in their decision not to impose ad-

[20] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

dition to my colleagues, I would adopt the judge's finding that the Respondent, through its Supervisor Deanna Diaz, violated Section 8(fiMDBUfl*ERR17*fiMDNMfl Diaz placed a ''Vote No'' bumper sticker on employee Sookie Ha's back. The circumstances surrounding the incident do not establish that the employee consented to the sticker or that it occurred in the context of friendly ''horseplay.'' Indeed, we have adopted the judge's finding that Supervisor Diaz had, on two prior occasions, ordered employees to remove Section 7 rights by talking in any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl

(fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*ERR17*fiMDNMfl

(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*ERR17*fiMDNMfl

(fiMDBUfl*ERR17*fiMDNMfld)fiMDBUfl*ERR17*fiMDNMfl

1. Contrary to my colleagues, I would adopt the judge's finding that the Respondent, through its Supervisor Deanna Diaz, violated Section 8(fiMDBUfl*ERR17*fiMDNMfl Diaz placed a ''Vote No'' bumper sticker on employee Sookie Ha's back. The circumstances surrounding the incident do not establish that the employee consented to the sticker or that it occurred in the context of friendly ''horseplay.'' Indeed, we have adopted the judge's finding that Supervisor Diaz had, on two prior occasions, ordered employees to remove antiunion T-shirts by talking in any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act. In her view, she intended to vote, and by prohibiting her from wearing a prounion button. Given this context, the unwelcome placement of an antiunion bumper sticker on Ha's back, which would cause the employee to make an observable choice regarding her sentiments in the presence of the supervisor, in my view, constitutes unlawful interrogation. See *Kurz-Kasch, Inc.*, 239 NLRB 1044 (fiMDBUfl*ERR17*fiMDNMfl1978)fiMDBUfl*ERR17*fiMDNMfl

2. I would reject the judge's conclusion that the Respondent's establishment of quality action teams (fiMDBUfl*ERR17*fiMDNMflQATs)fiMDBUfl*ERR17*fiMDNMfl did not violate Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl The quality action teams were not an unlawful grant of benefits for the same reasons that he concluded that the reinstitution of the board of adjustment and the institution of seniority for layoffs pursuant to the PEP program were not an unlawful benefit. I agree with my colleagues' rejection of the judge's conclusions concerning those benefits, and for the same reasons, I would reject his conclusion that the QAT teams were an unlawful benefit.

In particular, the judge found that the Respondent intended the QATs to be ''an appropriate remedy for poor communication and poor morale among Respondent employees.'' Thus, at the height of its antiunion campaign, the Respondent bestowed on its employees a greater willingness to listen and respond to employee perspectives on a wide variety of issues. I believe the timing and surrounding circumstances indicate that the QATs would reasonably be perceived by employees as an attempt to ameliorate, at least in part, perceived employee disgruntlement. For the same reasons that my colleagues have concluded that the Respondent has not demonstrated that it would have granted the other benefits in the absence of the union campaign, I would conclude that it has failed to prove the same thing with regard to its institution of the quality action teams. In my view, reasonable employees would conclude that the teams were instituted in order to undermine the union campaign, and thus I would conclude that the Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(6fiMDBUfl*ERR17*fiMDNMfl benefit.

3. I also concur with my colleagues in their decision to adopt the judge's recommendations to issue a broad

cease-and-desist order and to impose the extra notice remedies outlined in the decision. Contrary to my colleagues, however, I would reject the judge's recommendation to deny many of the requests of the General Counsel and the Union for even further notice and access remedies[1] because of the numerous, serious, and pervasive violations of the Act that occurred in this case.

In implementing its antiunion campaign, the Respondent violated the Act no fewer than 55 times, a number which, in itself, indicates a significant disregard for the statutory rights of its employees. Yet the quantity of violations alone does not adequately portray the severity of the misconduct that occurred in this case. The Respondent committed several serious unfair labor practices that permeated the entire bargaining unit. In this regard, the Respondent (fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl through its president, Ronald Hughes, sent a memo on April 7, 1993, to all employees unlawfully threatening them with unspecified reprisals and implying that supporting the Union was futile; (fiMDBUfl*ERR17*fiMDNMfl2)fiMDBUfl*ERR17*fiMDNMfl unlawfully granted unitwide benefits to employees in a second Hughes memo of May 7, 1993, that instituted seniority based layoffs and restored the ''board of adjustment,'' an internal employee grievance resolution panel; (fiMDBUfl*ERR17*fiMDNMfl3)fiMDBUfl*ERR17*fiMDNMfl implied promises to grant additional benefits or remedy employees' grievances, or both, in a series of speeches made by Hughes 2 days before the election; (fiMDBUfl*ERR17*fiMDNMfl4)fiMDBUfl*ERR17*fiMDNMfl established company dominated labor organizations, known as ''quality action teams,'' to deal with employees on a variety of subjects, including terms and conditions of employment. The Respondent thus engaged in many instances of misconduct that transgressed the statutory rights of each of the 1365 employees in the bargaining unit.

Equally as troubling as the unitwide unfair labor practices enumerated above are the Respondent's efforts to stifle communication among its employees, both prounion and antiunion, on the subject of union representation. In this regard, the judge found that the Respondent maintained and enforced overly broad rules that prohibited employee communication with fellow employees during worktime regarding nonwork matters, prohibited the distribution of union and other literature by off-duty employees in nonwork areas, and prohibited employees from wearing ''unauthorized'' pins or insignia during worktime and/or in work areas. In addition, on numerous occasions the Respondent disparately enforced its no distribution rule by removing union literature, but not other literature, from employees' breakrooms, cafeterias, and locker rooms. The Respondent also disparately enforced its no solicitation rule by permitting and, indeed, encouraging antiunion employees to campaign during worktime while the Respondent curtailed the same activities of prounion employees. By these acts the Respondent suppressed the exchange of ideas and information and, in so doing, undermined fundamental employee rights that are central to the safeguards established in Section 7 of the Act. Indeed, essential to an employee's free choice regarding union representation is the ability to solicit opinions that unduly obstruct the flow of relevant information on that subject.

In addition, the Respondent's efforts to communicate its own antiunion message were not undertaken with a view to carrying out the commission of additional unfair labor practices. Thus, the judge found that during the campaign the Respondent solicited grievances with implied promises to remedy them, promised benefits to employees and threatened the loss of benefits depending on the outcome of the election, threatened an employee with hotel closure if the Union won, and interrogated employees on prohibited subjects. These violations affected employees in a number of different departments throughout the bargaining unit and demonstrate a consistent pattern of disregard for employees' statutory rights.

Given this brief recitation of the nature and severity of the Respondent's misconduct in this case, the imposition of extra notice and access remedies is, in my view, both necessary and appropriate.[2] On learning of

[1] In addition to the notice remedies recommended by the judge and adopted by the majority, the General Counsel requested that the judge recommend an order requiring the Respondent to grant the Union and its representatives reasonable access for 6 months to the Respondent's bulletin boards and other customary places for the posting of employee notices; to give the Union notice of and equal time and facilities to respond to any address by the Respondent to the employees on the subject of union representation; and to permit the Union to make a 30-minute speech to employees on worktime before any Board-conducted election. The General Counsel also requested that the notice be read personally by either Company President Ronald Hughes or another member of the executive committee.

The Union requested virtually identical remedies to those sought by the General Counsel and, in addition, requested an order requiring the Respondent to grant the Union access to employees in nonwork areas during nonwork time; to grant the Union access to meetings in which the Respondent addresses employees on the subject of union representation; to publish the notice in local newspapers twice per week for 4 weeks; to permit the Union to make a 1-hour speech to employees on worktime before any Board-conducted election; and to have either the president or vice president/general manager personally sign the notice.

[2] The judge denied any additional access remedies in part because ''the Union has adequate alternative means of effective communications with employees.'' I would reject this rationale for two reasons. First, the Board has never held that the presence of adequate alternative means of communication with employees is a factor to be considered in the imposition of access remedies following a Respondent's commission of unfair labor practices. Second, even if we were to consider the adequacy of the Union's channels of communication in this case, I would conclude that those channels were significantly restricted due to the Respondent's conduct in unlawfully promulgating and/or enforcing work rules limiting the free flow of information regarding union representation. As a result, if considered

the Union's organizing campaign, the Respondent waged an aggressive countercampaign that was broad in scope, reckless in implementation, and that is likely to have a continuing coercive affect on the free exercise of employee rights for some time to come. Under similar circumstances, the Board has not been reluctant to order remedies beyond those ordinarily imposed to dissipate the effects of the violations committed. See, e.g., *United States Services Industries*, 319 NLRB No. 38 (fiMDBUfl*ERR17*fiMDNMflOct. 12, 1995)fiMDBUfl*ERR17*fiMDNMfl; *Fieldcrest Cannon, Inc.*, 318 NLRB No. 54 (fiMDBUfl*ERR17*fiMDNMflAug. 25, 1995)fiMDBUfl*ERR17*fiMDNMfl; *Three Sisters Sportswear Co.*, 312 NLRB 853 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl; *Texas Super Foods*, 303 NLRB 209 (fiMDBUfl*ERR17*fiMDNMfl1991)fiMDBUfl*ERR17*fiMDNMfl; *Monfort of Colorado*, 298 NLRB 73 (fiMDBUfl*ERR17*fiMDNMfl1990)fiMDBUfl*ERR17*fiMDNMfl, enfd. 965 F.2d 1538 (fiMDBUfl*ERR17*fiMDNMfl9th Cir. 1992)fiMDBUfl*ERR17*fiMDNMfl; and *Sambo's Restaurant*, 247 NLRB 777 (fiMDBUfl*ERR17*fiMDNMfl1980)fiMDBUfl*ERR17*fiMDNMfl, enfd. 641 F.2d 794 (fiMDBUfl*ERR17*fiMDNMfl9th Cir. 1981).

My colleagues conclude that further remedial efforts are unnecessary because the Union, after withdrawing its petition in this case, filed a second petition, lost the second election, and then declined to file objections. Based on this outcome, my colleagues conclude that a ''free and fair second election'' has been held, so no further measures are necessary to remedy the Respondent's systematic interference with its employees' attempts to organize and to learn about the benefits of unionization. I decline to draw this conclusion. In fact, in my view, the fact that the Union lost the second election could very well mean that the poisonous atmosphere caused by the Respondent's pervasive unfair labor practices remained and continued to affect employee free choice, and if this is so it only underscores the need for further remedies which will impart the message to employees that they are free to pursue unionization without interference from the Respondent. And in any event, the fact that the Union did not file objections does not necessarily mean that the Union, or the employees, conceded that a ''free and fair second election'' was held. A union will decline to file objections for any number of reasons, even if it is convinced that coercive conduct by the employer interfered with employees' free choice. It may be that the Union is convinced that it could not win a third election in the absence of effective remedies for the Respondent's unfair labor practices, which after all, have yet to be addressed even by the Board's traditional remedies. I simply cannot share the view that as a result of the Union's decision regarding the filing of objections, regardless of the reasons for that decision, the consequences of the pervasive unfair labor practices we have found in this case have been somehow mitigated.

Accordingly, in addition to adopting the remedies recommended by the judge, I would order that Company President Ronald Hughes personally read the notice or, at his option, be present when the notice is read by a Board agent to an assembled audience of the Respondent's employees.[3] In addition, I would order that the Respondent, on request made by the Union within 1 year of the date of the Board's decision, (fiMDBUfl*ERR17*fiMDNMfl grant the Union and its representatives reasonable access for 6 months to the Respondent's bulletin boards and other customary places for the posting of employee notices, (fiMDBUfl*ERR17*fiMDNMfl2)fiMDBUfl*ERR17*fiMDNMfl and equal time and facilities to respond to any address by the Respondent to the employees on the subject of union representation, (fiMDBUfl*ERR17*fiMDNMfl3)fiMDBUfl*ERR17*fiMDNMfl 30-minute speech to employees on worktime in the period between 10 days preceding and 48 hours preceding any Board-conducted election, and (fiMDBUfl*ERR17*fiMDNMfl Union reasonable access to employees in nonwork areas during nonwork time. Finally, in agreement with the judge, I would require the Respondent, again on request of the Union, to furnish the Union on a timely basis with a complete list of the names and addresses of Respondent's current employees. In my view, these extra measures are necessary to diminish the enduring impact of the Respondent's unfair labor practices and to ensure that any future organizing attempts by the Union are free from the interference and coercion present in this case.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union

at all, such a factor would, in my view, militate in favor of rather than against the imposition of additional access remedies in this case.

[3] The judge found that ''[a]ll or most of the unfair labor practices involve the planning and participation of Respondent's highest officials such as Hughes, Santo, Lane and Mooney.'' As a result, the personal involvement of the Respondent's highest officials is necessary at the remedial stage to reassure employees that a change in the Company's attitude has, in fact, occurred and that their Sec. 7 rights will not be disregarded in the future. See, e.g., *Three Sisters Sportswear*, 312 NLRB at 853; *Fieldcrest Cannon*, 318 NLRB No. 54, slip op. at 4 fn. 7.

Because many of the workers at the Reno Hilton do not speak English as their first language, I would order that following the reading of the notice in English, the notice be read in Spanish, Chinese, and Tagalog, either by the Respondent's supervisors fluent in the particular language or by designees of the Board. See *Domsey Trading Corp.*, 310 NLRB 777, 815 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17*fiMDNMfl; and *Fieldcrest Cannon*, supra.

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT solicit grievances from employees with explicit and implicit promises to rectify them.

WE WILL NOT interrogate employees about their attitudes toward the Union and how they intend to vote in the election.

WE WILL NOT direct employees to remove union insignia from their clothing.

WE WILL NOT threaten employees that the hotel will be closed before the Union can come in.

WE WILL NOT maintain and enforce in a disparate manner a no-solicitation/no-distribution policy.

WE WILL NOT grant employee benefits that we would not otherwise have granted during a union organizing campaign, provided that nothing in the Board's order requires us to withdraw, vary, or abandon any wage increase or other benefits we have granted or promised to employees.

WE WILL NOT require employees to accept or reject an antiunion button or T-shirt as unlawful interrogation.

WE WILL NOT tell employees they have no choice, but have to vote in the election.

WE WILL NOT threaten employees with loss of jobs, loss of benefits, or unspecified reprisals, if they support the Union.

WE WILL NOT tell employees that by supporting the Union, they are showing disloyalty to supervisors and to the hotel.

WE WILL NOT promise that employees will receive better benefits if the Union is defeated.

WE WILL NOT create the impression that employees' union activities are under surveillance.

WE WILL NOT disparately enforce a no-talking rule.

WE WILL NOT imply to employees that support for the Union would be futile.

WE WILL NOT order off-duty employees not to distribute union literature in nonworking areas and threaten them with arrest if they do not comply with the order.

WE WILL NOT establish and dominate the formation and administration of any quality action team or any other labor organization.

WE WILL NOT deal with the quality action teams or with any reoganization or successor to them.

WE WILL NOT order employees to wear antiunion T-shirts.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL disestablish the quality action teams.

RENO HILTON RESORTS CORPORATION
D/B/A RENO HILTON

Gary M. Connaughton and *Ariel Sotolongo, Esqs.*, for the General Counsel.

Joseph E. Herman and *Keith D. Grossman, Esqs. (fiMDBUfl*ERR17*fiMDNM Lewis & Bockius)fiMDBUfl*ERR17*fiMDNMfl,* of Los Angeles, California, fo spondent.

Timothy Sears, Esq., of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Reno, Nevada, on May 10–13 and 17–20, June 21–24, and August 16–17, 1994,[1] pursuant to complaints issued by the Regional Director for the National Labor Relations Board (fiMDBUfl*ERR17*fiMDNMflthe Board)fiMDBU November 16 (fiMDBUfl*ERR17*fiMDNMflCase 32–CA–13390)fiMDBUfl*ER (fiMDBUfl*ERR17*fiMDNMflCase 32–CA–13602)fiMDBUfl*ERR17*fiMDNM gional Director ordered that the two complaints be consolidated with certain issues arising from a representation election in Case 32–RC–3720 (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 3(fiMDBU based upon charges filed on August 19 (fiMDBUfl*ERR17*fiMDNMflCase 32– and on December 8 (fiMDBUfl*ERR17*fiMDNMflCase 32–CA–13602)fiMDBU hood of Carpenters, Western Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL–CIO (fiMDBUfl*ERR17*fiMDNMflthe Union)fiMDBUfl*ERR17*fiMDNM poration d/b/a Reno Hilton (fiMDBUfl*ERR17*fiMDNMflRespondent)fiMDBUf tain violations of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17 Labor Relations Act (fiMDBUfl*ERR17*fiMDNMflthe Act)fiMDBUfl*ERR17*f

The Union's representation petition was filed on June 28 and sought a representation election among certain of Respondent's service employees. An election was held pursuant to a Decision and Direction of Election (fiMDBUfl*ERR17*fiMDNMflG.C. Ex November 4. Objections to conduct affecting the outcome of the election were filed by the Union on November 10. In addition, it appears from the tally of ballots (fiMDBUfl*ERR17*fiMDNMflG.C. that 25 votes were challenged, and that they are not sufficient in number to affect the outcome of the election.

According to the tally of ballots, 1365 employees were eligible to cast ballots. Of this group, 1225 employees cast valid ballots, 507 for the Union and 718 against the Union, with 12 void ballots.

Issues

Whether Respondent, acting through its supervisors and/or agents, committed one or more of the following acts, the result of which was to interfere with, restrain, and coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act including employees' right to support the Union:

(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl Solicited grie promising to remedy the grievances.

[1] All dates herein refer to 1993 unless otherwise indicated.

(fiMDBUfl*ERR17*fiMDNMfl2)fiMDBUfl*ERR17*fiMDNMfl interrogated employees about their union membership, support for the Union, and/or union sympathies of the employees.

(fiMDBUfl*ERR17*fiMDNMfl3)fiMDBUfl*ERR17*fiMDNMfl threatened employees with loss of benefits, closure of the facility, and/or termination of union supporters or unspecified reprisals.

(fiMDBUfl*ERR17*fiMDNMfl4)fiMDBUfl*ERR17*fiMDNMfl Caused [illegible] to be placed under surveillance and created the impression with employees that union activities were under surveillance.

(fiMDBUfl*ERR17*fiMDNMfl5)fiMDBUfl*ERR17*fiMDNMfl Maintained and enforced an overbroad and unlawful no-solicitation/no-distribution policy, and disparately enforced said policy against union supporters.

(fiMDBUfl*ERR17*fiMDNMfl6)fiMDBUfl*ERR17*fiMDNMfl Improved employee working conditions by implementing a merit wage review program and by replacing a disfavored supervisor to encourage employees to vote against the Union and by promising additional benefits to employees if they rejected the Union.

(fiMDBUfl*ERR17*fiMDNMfl7)fiMDBUfl*ERR17*fiMDNMfl Offered to deal directly with employees if they rejected union representation.

(fiMDBUfl*ERR17*fiMDNMfl8)fiMDBUfl*ERR17*fiMDNMfl Told employees that a vote for the Union would express disloyalty toward Respondent; or toward a supervisor.

(fiMDBUfl*ERR17*fiMDNMfl9)fiMDBUfl*ERR17*fiMDNMfl Told employees that support for the Union would be futile because the Company would not agree to any of the Union's bargaining demands.

(fiMDBUfl*ERR17*fiMDNMfl10)fiMDBUfl*ERR17*fiMDNMfl Required employees to wear antiunion buttons or T-shirts, or distributed the items as a form of interrogation and required removal of prounion buttons.

(fiMDBUfl*ERR17*fiMDNMfl11)fiMDBUfl*ERR17*fiMDNMfl On election day, required employees arriving from work to pass through an antiunion gauntlet outside the employee entrance.

(fiMDBUfl*ERR17*fiMDNMfl12)fiMDBUfl*ERR17*fiMDNMfl Established quality action teams which were alleged labor organizations dominated by the Employer and whose function was to deal with employees regarding certain mandatory subjects of negotiations.

(fiMDBUfl*ERR17*fiMDNMfl13)fiMDBUfl*ERR17*fiMDNMfl Assigned an employee additional unwelcome work as retaliation for his support for the Union.

All parities were given full opportunity to participate, to introduce relevant evidence, to examine and to cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel, the Charging Party,[2] and the Respondent.

On the entire record of the case, and from my observation of the witnesses and their demeanor,[3] I make the following

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits that it is a Nevada corporation which operates a hotel-restaurant-casino complex and maintains an office and place of business located in Reno, Nevada. Respondent further admits that during the past year, in the course and conduct of its business, that its gross volume exceeded $500,000 and that during the past year in the course and conduct of its business operations, it purchased and received goods or services valued in excess of $5000 which originated outside the State of Nevada. Accordingly it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(fiMDBUfl*ERR17*fiMDNMfl2)fiMDBUfl*ERR17*fiMDNMfl, (fiMDBUfl*ERR17*fiMDNMfl6)fiMDBUfl*ERR17*fiMDNMfl, and (fiMDBUfl*ERR17*fiMDNMfl7)fiMDBUfl*ERR17*fiMDNMfl of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that United Brotherhood of Carpenters, Western Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL–CIO is a labor organization within the meaning of Section 2(fiMDBUfl*ERR17*fiMDNMfl5)fiMDBUfl*ERR17*fiMDNMfl of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Overview

The property in question includes a 2000-room hotel, a casino, entertainment stage, several restaurants, and surrounding parking lots for guests and employees. Originally owned and operated in the late 1970s by MGM, the property was later sold to Bally's, which in the late 1980s and early 1990s fell upon hard times. Eventually, the property fell under the jurisdiction of a U.S. Bankruptcy Court in New Jersey, where it was offered for sale. Respondent was one of two entities which expressed an interest in acquiring the property. Prior to making what became a successful bid for the property, Respondent engaged in a process called, ''due diligence.'' As I understand it, this undertaking consisted of a detailed examination of Bally's books and records, an inspection of the physical premises, and a survey of various wage rates in the surrounding area. The result of these activities convinced Respondent's executives that the property had potential.

On or about August 1, 1992, Respondent assumed ownership of the property and became the new employer of the approximately 2500 employees working there. As I will detail below, Respondent made certain changes in the property's operations which many employees perceived to be adverse to their interests. Accordingly, it was not long before the Union appeared on the scene. Exactly when this occurred is difficult to say. The record contains a letter dated March 26, from union official, Norman Bashore, to Respondent's president, Ron Hughes, giving notice that union activity was well underway (fiMDBUfl*ERR17*fiMDNMflU. Exh. 5)fiMDBUfl*ERR17*fiMDNMfl

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[2] Charging Party's motion to file its brief 1 day late is granted and the Charging Party's letter to me dated November 16, 1994, citing recent authority is noted.

[3] The Board has instructed that current employees testifying against their employer's interest are entitled to enhanced credibility. *Oster Specialty Products*, 315 NLRB 67, 72 fn. 9 (fiMDBUfl*ERR17*fiMDNMfl1994); *Flexsteel Industries, Inc.*, 266 NLRB 761, 764 fn. 13 (fiMDBUfl*ERR17*fiMDNMfl1983); *Gold Standard Enterprises*, 238 NLRB 114, 116 (fiMDBUfl*ERR17*fiMDNMfl1978); *Flomatic Corp.*, 203 NLRB 489, 491 (fiMDBUfl*ERR17*fiMDNMfl1972)fiMDBUfl*ERR17*fiMDNMfl. Having observed the witnesses below, I have relied in part on their status as current employees.

[4] On June 23, 1994, the 11th day of hearing, I denied the General Counsel's motion to amend the complaint in certain particulars. Then as now, I was mindful of the factors by which such motions are to be measured, including whether the issue was fully litigated, and whether Respondent demonstrated that the amendment was prejudicial. *Pincus Elevator & Electric Co.*, 308 NLRB 684 (fiMDBUfl*ERR17*fiMDNMfl199[illegible] ever, as the Board also recognized in *Pincus*, supra at 685, a judge has wide discretion under Sec. 102.17 of the Board's Rules and Regulations to grant or deny such motions. I denied the motion, because [illegible] during the hearing the General Counsel had repeatedly been permitted to amend the complaint. *Bohemian* [illegible] Moreover, Respondent's objection and finally, I said, enough of the matter, the allegation was cumulative and would not affect the final outcome of the case or the remedy.

not the first notice to Respondent of union activity. In fact, Hughes gave the following testimony under cross-examination by union counsel:

> Q. Mr. Hughes, when did the Reno Hilton first learn of union organizing activity going on at the hotel?
>
> A. I would say in—it was either December or January I would say we would have heard about it, cards were being signed (fiMDBUfl*ERR17*fiMDNMflTr. 1869–1870)fiMDBUfl*ERR17*fiMDNMfl.

There the matter would have ended but for redirect examination. Respondent's counsel first showed Hughes Union Exhibit 5, and then asked the following questions:

> Q. You were uncertain as to the date that you first became aware of union organizing activity, does this help to refresh your recollection?
>
> [Opposing counsels both object and I sustained as to form. Counsel rephrased the question.]
>
> Q. Do you know the date when you first recalled becoming aware of union organizing activity?
>
> A. Well, when I read this particular letter, it causes me to think that my earlier estimate of the fact that it was started earlier is not correct, because this letter came very early, very early on and its a March letter, end of March almost. So, obviously, my estimate of earlier activity was incorrect. And I would now give a different estimate of when that would have started. . . . I would say 30 days would be my estimate now [before receiving U. Exh. 5] [Tr. 1873–1874].

I find that Respondent became aware of union activity in January/February.

Many of Respondent's witnesses testified to the Hilton Corporation's[5] allegedly good relationship with its existing unions. Respondent inherited two unions and their collective-bargaining agreements from Bally's: the Operating Engineers which represent about 50 of Respondent's engineers and the International Association of Theatrical and Stage Employees (fiMDBUfl*ERR17*fiMDNMflIATSE)fiMDBUfl*ERR17*fiMDNMfl which represents about 20 of Respondent's stagehands. In addition, according to Kathy Rybar, a Hilton vice president in charge of regional human relations and Respondent witness, Hilton properties in Las Vegas, the Flamingo Las Vegas, and the Las Vegas Hilton, each have several unions on premises including the Teamsters, the Culinary Workers, IATSE, Operating Engineers, Musicians, and Painters. She also testified that Hilton has collective-bargaining agreements and good relations with all its existing unions, a premise I accept for the sake of argument. However, as the evidence in this case makes clear, Hilton does not want to deal with any more unions at the Reno Hilton, or any other of its Nevada properties.[6] All agree that once Respondent learned of the union organizing activities, it decided at the highest corporate levels to oppose the Union and to involve all or most of its midlevel and high executives in resisting the Union's efforts.

2. Respondent takes over

Initially, Respondent elected to retain all or most of the Bally employees and supervisors, many of whom had worked on the property for long periods of time, in some cases going back to MGM. Both MGM and Bally had promoted many of the supervisors from the ranks. Respondent began to hold a series of orientation meetings with all employees broken down into small units of 10 to 20 employees. New executives were introduced, such as Bill Sherlock, Respondent's then president who was later replaced by Hughes, Tony Santos, Respondent's new general manager, John Armentrout, Respondent's new vice president for food and beverage, and Lynn Hein, a vice president of the Hilton Corporation, in charge of benefits administration. While the purpose of the orientation was to introduce employees to the Respondent's method of doing things including the distribution of an employee handbook, and to reassure them that their jobs, their wages, and their benefits were to continue on a business as usual basis, employees were aware of the Bally bankruptcy proceeding and were also aware that with new management, inevitably comes change. Employees were not to be disappointed.

One of the first changes was to be made in the Bally board of adjustment program. This was an internal arbitration panel of three persons used to settle disputes. Per order of Sherlock, with the concurrence of Lynda Jackson, then head of Respondent's human relations department, it was abolished within 60 days of Respondent's takeover. Because neither Sherlock nor Jackson testified, the rationale for this change has not been established with certainty. However, the record shows that by early April, Hughes decided to reinstate the board of adjustment and increase membership from three to five members.

Another change involved a wage freeze. This was based on the assumption that all or most Bally employees had received a wage increase in July 1992, an assumption that Respondent later learned was untrue. The wage freeze essentially lasted for about a year during which time Respondent allegedly was engaged in various wage surveys to compare the salaries paid by Bally to other hotel casinos and to compare the salaries paid by Bally to other Hilton properties within the State of Nevada. Some of the persons involved in the wage surveys such as Molly McKenzie from Hilton's corporate office did not testify. However, the evidence shows that on July 1, the wage freeze ended and Respondent implemented a merit wage increase system. This plan was based on evaluations of employees by their supervisors, after the latter had been trained during the spring in the proper method of evaluating employees. All or most Respondent employees received wage increases in July pursuant to the new merit pay plan. In fact, according to Santo, because Respondent was not able to recruit the desired quality of employee, a problem it recognized by March, it raised wages in certain areas before July 1 allegedly to become competitive with other properties in Reno.

Perhaps the change which employees found most disturbing was called the ''profit enhancement program'' (fiMDBUfl*ERR17*fiMD
The primary architect of this program was another Hilton corporate executive named John Giovenco who by the time of

[5] ''Hilton'' or ''Hilton Corp.'' in this case includes its subsidiary, the Hilton Gaming Corp., but does not include Respondent, a second subsidiary.

[6] I am advised administratively, Hilton is opposing union organizing activities at the Reno Hilton (fiMDBUfl*ERR17*fiMDNMflGuard Union)fiMDBUfl*ERR17*fiMDNMfl, the Reno Flamingo (fiMDBUfl*ERR17*fiMDNMflCarpenters Union)fiMDBUfl*ERR17*fiMDNMfl, and the daughter Flamingo Hilton (fiMDBUfl*ERR17*fiMDNMflSteelworkers Union)fiMDBUfl*ERR17*fiMDNMfl.

hearing was long gone from Hilton and never testified. Implemented in December 1992, PEP had a number of results some expected, some unexpected. But first, what was PEP. Santo testified as an adverse witness for the General Counsel:

> [I]t is a bottoms up approach for an organization, a large organization to become more efficient and hopefully eliminate unnecessary steps, paperwork and even positions.
>
> It starts down with brainstorming meetings with line employees. They come up with ideas. These ideas are then noted by the supervisor or manager. And then it's reviewed by the manager and sometimes their division head, which is the executive committee that supervises the department.
>
> And they then evaluate the idea to see if it has merit. If the idea has merit they cost it out and see where there's potential savings or if it could be a revenue generating idea. If the idea is one that's a marketing idea then we look at it and we do feasibility. We may call an advertising agent to find out how much it would cost us an ad.
>
> And then all these ideas are placed in a booklet by department and then they're presented to the . . . executive committee as well as some members from our corporate office in which case we discuss—The department head comes in and presents the idea. And then as a group we basically determine whether the idea is a go or a no go or further study. [Tr. 39–40.]

Notwithstanding this lofty and long-winded description of PEP, many employees interpreted it in a purely negative way—a program by which many of their friends and coworkers lost their jobs. In fact about 100 employees were terminated as a result of PEP. Because seniority was not a criteria for termination, employees feared random selection even more. To be sure most employees terminated were supervisors, yet remaining employees resented and feared PEP, perhaps believing they could be selected next for termination, so Respondent could become more efficient.

On April 2, a time subsequent to the onset of union activity and Respondent's knowledge of same, Hughes wrote a memo to employees informing them that PEP was over (fiMDBUfl*ERR17*fiMDNMflU. Exh. 6)fiMDBUfl*ERR17*fiMDNMfl. This time is also significant because as noted above, Respondent was then hiring new employees and even found it necessary in certain instances to lift the wage freeze in order to hire more competent and more experienced employees than it could otherwise hire.

3. Respondent's campaign strategy to defeat the Union

Much of the evidence presented in this case is not disputed. During the time between when Respondent became aware of union organizing activity and the election, all agree that Respondent undertook certain measures to oppose the Union's campaign. In other cases, all agree that certain events occurred but there is a dispute as to whether the events were related to the campaign. As examples of the former, I note that Respondent allowed antiunion posters to be hung in an area of the hotel called the ''gray area,'' a section set aside for employees only and where public access was restricted. Further, Hughes wrote memos to and spoke to bargaining unit employees regarding alleged advantages of not having the Union. Because many of Respondent's bargaining unit employees were not fluent in English, particularly the housekeeping, laundry, and steward departments, Respondent accepted the offers of certain employees fluent in Spanish, Chinese, and Tagalog (fiMDBUfl*ERR17*fiMDNMflPhilippine)fiM for Respondent, during worktime. In a few instances, employees who performed this function were recruited, the great majority volunteered their services to Respondent's officials. Essentially for about 1–2 weeks before the election for up to 8 hours per day, these employees spoke in their native language to other employees who were either on break or were themselves on worktime about the benefits and desirability of remaining nonunion both as expressed in Hughes' memos they were supposed to be translating and as expressed by the interpreters' own arguments.

To further enhance its chances of winning the election, Respondent retained the sources of the Burke Group, a management consulting firm. The Union called David Burke, the firm's principal, as its witness and he explained how the firm was first retained on March 4, allegedly for nonunion reasons. That is, Burke and his associates, primarily Manny Gonzales, Larry Wong, and Ward Rupple, were supposedly assisting Respondent to increase communication between management and employees and to make the organization more efficient. Later, according to Burke, their mission changed as he and his associates assisted Hughes, Santo, and other Respondent executives on ways to defeat the Union. Besides Burke, Gonzales and Wong also testified, but Rupple did not. Essentially Gonzales and Wong who were fluent in the languages recited above, also acted as interpreters for Hughes' memos and Hughes' speeches. Along with Rupple, they held training sessions for Respondent managers on how to behave during a union election campaign. Many of Respondent's witnesses recalled receiving a copy of an NLRB booklet explaining the Act (fiMDBUfl*ERR17*fiMDNMflR. Exh. 5)fiMDBUfl* word ''TIPS'' as a memory device for what the Act did not permit supervisors to do (fiMDBUfl*ERR17*fiMDNMflNo Threats, Interrogati ises, or Surveillance)fiMDBUfl*ERR17*fiMDNMfl. As will be shown below, m spondent's managers were not good students.

Turning briefly to certain events about which there is controversy, as to whether they were motivated by the election campaign, I note the replacement of the director of housekeeping, Barb Skaug, who did not testify, with Pam Watts, who did testify. As mentioned above, the General Counsel also raised questions about the timing of wage increases, and I note that employees were told before the election that dental benefits would increase. All agree that Respondent instituted ''quality action teams'' which the General Counsel contends has a more sinister purpose than that asserted by Respondent to wit, merely a method of increasing communications and efficiency.

In conclusion, I note that the evidence provided by the General Counsel and union witnesses who were either current or former employees, about conversations which they had with supervisors, or heard between another employee and a supervisor, followed certain patterns. According to the various witnesses, the supervisor usually initiated a conversation about the union election and in one form or another stated that Respondent needed more time to repair the damage caused by its many mistakes, or that Respondent should be given another chance. In some cases, the supervisor was said

to have talked about certain adverse experiences which the supervisor had with unions in other employment or told the employee that a vote for the Union was a vote against that supervisor. And, in some cases, the supervisor asked what the employee thought could be done to improve conditions or flat out asked that employee how the employee intended to vote.

Not surprisingly, Respondent's supervisor witnesses denied all or most of the content of the conversation as described above, but did admit to engaging employees during worktime in union related conversations. Where this was admitted, the supervisor testified generally that he or she merely stated to the employees that all matters—wages, working conditions, and benefits were subject to negotiations and that the Union could not guarantee anything.

B. *Analysis and Conclusions*

1. Introduction and general legal principles

On the second day of hearing, Respondent took the position that it could show that no unfair labor practices were committed, and if any were committed, they were isolated and discreet, limited to one to two supervisors. (fiMDBUfl*ERR17*fiMDNMflTr. 253.)fiMDBUfl*ERR17*fiMDNMfl Now that the hearing is over, Respondent asserts in stronger terms that none of the alleged unfair labor practices, nor any alleged election objections are supported by law or evidence, and thus no remedy of any kind is warranted (fiMDBUfl*ERR17*fiMDNMflBr. 3)fiMDBUfl*ERR17*fiMDNMfl. As will be detailed below, I disagree with Respondent's position, however stated.

I begin with a recitation of basic legal principles.

Section 7 of the National Labor Relations Act guarantees employees the ''right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection,'' as well as the right ''to refrain from any or all such activities.'' Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl the Act makes it an unfair labor practice for an employer ''to interfere with, restrain or coerce employees in the exercise of'' their Section 7 rights. The ''test'' of ''inference, restraint and coercion under Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl on the employer's motive or on whether the coercion succeeded or failed . . . . [t]he test is whether the employer engaged in conduct, which it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act.'' See *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (fiMDBUfl*ERR17*fiMDNMfl7th Cir. 1946)fiMDBUfl*ERR17*fiMDNMfl, and *Overnite Transportation Co.*, 296 NLRB 669, 685–687 (fiMDBUfl*ERR17*fiMDNMfl1989)fiMDBUfl*ERR17*fiMDNMfl, enfd. 938 F.2d 815 (fiMDBUfl*ERR17*fiMDNMfl7th Cir. 1991)

In making the requisite determination, the Board considers the total context in which the challenged conduct occurs and is justified in viewing the issue from the standpoint of its impact upon the employees. *NLRB v. E. I. du Pont & Co.*, 750 F.2d 524, 528 (fiMDBUfl*ERR17*fiMDNMfl6th Cir. 1984)fiMDBUfl*ERR17*fiMDNMfl.

Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl is modeled after Section 8(fiMDBUfl*ERR17*fiMDNMfl which defines and implements the First Amendment right of free speech in the context of labor relations. Also see *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (fiMDBUfl*ERR17*fiMDNMfl1969)fiMDBUfl*ERR17*fiMDNMfl and *NLRB v. Four Winds Industries*, 530 F.2d 75 (fiMDBUfl*ERR17*fiMDNMfl9th Cir. 1976)fiMDBUfl*ERR17*fiMDNMfl. Section 8(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*ERR17*fiMDNMfl permits employ opinions'' concerning union representation without running afoul of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNM tains no threat of reprisal or force or promise of benefit.'' *NLRB v. Marine World USA*, 611 F.2d 1274, 1276 (fiMDBUfl*ERR17*fiMDN 1980)fiMDBUfl*ERR17*fiMDNMfl. The employer is also free to express opinio predictions, reasonably based in fact, about the possible effects of unionization on its company. *NLRB v. Gissel Packing Co.*, supra at 618. In determining whether questioned statements are permissible under Section 8(fiMDBUfl*ERR17*fiMDNMflc)fiMI must be considered in the context in which they were made and in view of the totality of the employer's conduct. *NLRB v. Marine World USA*, supra; and *NLRB v. Lenkurt Electric Co.*, 438 F.2d 1102 (fiMDBUfl*ERR17*fiMDNMfl9th Cir. 1971)fiMDBUfl*E be the economically dependent relationship of the employees to the employer and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear. *NLRB v. Gissel Packing Co.*, supra at 617; and *NLRB v. Marine World USA*, supra.

2. Specific allegations (fiMDBUfl*ERR17*fiMDNMflCase 32–CA–133

a. *Paragraphs 6(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17

Between December 1989 and December, the General Counsel's witness, Janice Trevino, worked on the property both for Bally's and for Respondent, as a room reservations clerk. Trevino credibly testified that on April 14, she and three other employees attended a meeting in the office of Jan Mooney, Respondent's room reservations manager. Dean Lane, Respondent's executive assistant manager and the Hotel's second highest official after Santo, was also present. Lane told Trevino, a union supporter, that he had heard she had been discussing issues with the Union and asked her what Respondent could do to convince her that things were getting better. Lane also told her that employees should give management 12 months to prove things are getting better and assured her that PEP was over.

Lane, a witness for Respondent, did not dispute the meeting but offered an innocuous explanation for it. He testified that he told Trevino and the other employees that PEP was an ''aberration,'' and that they should not judge Respondent exclusively by that program. He admitted further that he assured Trevino that things were going to get better.

In *Reliance Electric Co.*, 191 NLRB 44, 46 (fiMDBUfl*ERR17*fiMDNMf

> Where, as here, an employer, who has not previously had a practice of soliciting employee grievances or complaints, adopts such a course when unions engage in organizational campaigns seeking to represent employees, we think there is a compelling inference that [he] impliedly promises to remedy the ills and correct the conditions which he uncovers as a result of his inquiries and likewise urging on his employees that the combined program of inquiry and correction will make unionization unnecessary.

Furthermore, in *Uarco Inc.*, 216 NLRB 1, 2 (fiMDBUfl*ERR17*fiMDNMfl1974)fiMDBUfl*ERR17*fiMDNMfl, the Board, upon reference to this holding in *Reliance Electric Co.*, supra, stated:

> However, it is not the solicitation of grievances itself that is coercive and violative of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl promise to correct grievances or a concurrent interrogation or polling about union sympathies that is unlawful; the solicitation of grievances merely raises an inference that the employer is making such a promise, which inference is rebuttable by the employer.

The promise is implied from the circumstances of the case, including the timing of the solicitation and the announced purpose thereof. *Lasco Industries*, 217 NLRB 527 (fiMDBUfl*ERR17*fiMDNMfl1975)fiMDBUfl*ERR17*fiMDNMfl.

In the instant case no evidence was presented to show that the Respondent had a practice of meeting with employees personally, to hear their complaints or grievances. The timing of this meeting in which the solicitation occurred also takes on significance in that it occurred within the general timeframe that Respondent learned of the union campaign and was gearing up to oppose it.

Respondent asserts that under the authority of *Best Plumbing Supply*, 310 NLRB 143 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl, Lane's conduct did not violate the Act. In *Best Plumbing*, supra, the administrative law judge found, id. at 148, that at an employee meeting, a supervisor made a casual inquiry as to what was troubling employees. This is a far cry from the specific questions asked Trevino. I find that *Best Plumbing Supply*, supra, is of no help to Respondent. Compare also *Clark Equipment Co.*, 278 NLRB 498, 501 (fiMDBUfl*ERR17*fiMDNMfl1986)fiMDBUfl*ERR17*fiMDNMfl, where the Board approved ''general statements that conditions will improve'' only where the remark was made in the context of ''ongoing improvements instituted . . . prior to the union campaign.'' No prior improvements were shown in the instant case.

From all of the above, I find and conclude that the Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl by promising grievances from Trevino with explicit and implicit promises to rectify them. *Mast Advertising & Publishing*, 286 NLRB 955 fn. 2 (fiMDBUfl*ERR17*fiMDNMfl1987)fiMDBUfl*ERR17*fiMDNMfl, and *Vinal-Eck Industries*, 265 NLRB 1097 (fiMDBUfl*ERR17*fiMDNMfl1983)fiMDBUfl*ERR17*fiMDNMfl.

I also find that Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl by interrogating Trevino about her response to Lane's original inquiry. See *Yerger Trucking*, 307 NLRB 567, 569 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fiMDNMfl. For example, when Trevino stated that a union contract wage contract would convince her that things were getting better, Lane asked Trevino if that would actually change her opinion on the Union, and she replied that it would give her something to think about. Then he answered that Respondent could not do that as there were too many job classifications.

In *Rossmore House*, 269 NLRB 1176 (fiMDBUfl*ERR17*fiMDNMfl1984)fiMDBUfl*ERR17*fiMDNMfl, affd. 760 F.2d 1006 (fiMDBUfl*ERR17*fiMDNMfl9th Cir. 1985)fiMDBUfl*ERR17*fiMDNMfl, the Board reiterated the basic test for evaluating whether interrogations violate Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl of the Act established in *Blue Flash Express*, 109 NLRB 591 (fiMDBUfl*ERR17*fiMDNMfl1954)fiMDBUfl*ERR17*fiMDNMfl: whether under all the circumstances the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act. The Board then stated in *Rossmore House*, supra at 1177:

> Our view is consonant with that expressed by the Seventh Circuit Court of Appeals in *Midwest Stock Exchange v. NLRB* [635 F.2d 1255, 1267 (fiMDBUfl*ERR17*fiMDNMfl1980)fiMDBUfl*ERR17*fiMDNMfl] that the Board's test in evaluating 8(a)(1) allegations is whether employees reasonably could perceive from the interrogation that the employer was taking a position adverse to the Union or to the Act's protection. Thus, the Board will find unlawful interrogation where, under the totality of the circumstances, the interrogation reasonably tends to restrain, coerce, or interfere with employees in the exercise of their rights guaranteed by the Act. The Board will not find unlawful interrogation per se. Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl prohibits employers only from activity which is some manner tends to restrain, coerce or interfere with employee rights. To fall within the ambit of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl the words themselves or the context in which they are used must suggest an element of coercion or interference.

Thus, the surrounding circumstances of the interrogation determines if unlawfulness and the Board will consider the time, place, personnel involved, and the known position of the employer, in making such a determination.

Since Lane's questioning of these employees did not occur in the context of a ''casual'' and ''friendly'' conversation, was limited solely and precisely to the employees connection with seeking union representation, was made by a high-ranking management official in the office of another high-ranking supervisor, during worktime, it was unlawful. The fact that Trevino was an open union supporter does not render permissible, otherwise coercive questioning by a managerial employee. *Atlantic Forest Products*, 282 NLRB 855 (fiMDBUfl*ERR17*fiMDNMfl1987)fiMDBUfl*ERR17*fiMDNMfl, in Paragraphs 6(fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*ERR17*fiMDNMfl

Dean Lane is also implicated in this segment of the case according to the testimony of former employee Tom McAllaster. Now working at the U.S. Post Office, McAllaster formerly was employed on the property for 7 years as a front desk clerk and resigned in August. In mid to late April, Lane asked McAllaster if he could meet with him about 3:30–4 p.m. This meeting in Lane's office lasted for over an hour and was also attended by Terry Bolin, then the assistant director of the front office. The allegations resulting from this meeting concern unlawful interrogation, solicitation of grievances, and threats that employees may have to pay for certain benefits they had been receiving free up to that time.

According to McAllaster, Lane asked if he was for or against the union activity that had just begun at the hotel. To this, McAllaster said he was for the Union coming into the hotel and Lane asked why. McAllaster then referred to certain matters that he asserted had recently occurred. Lane responded that the Union would not be good for management or for the hotel. Bolin accused McAllaster of having questioned Lane. The conversation then came to an end. Lane also stated that if the Union came in, employees would lose benefits such as health benefits and probably would have to pay for meals, parking, and dry cleaning of uniforms. McAllaster said he could be willing to take his chances.

According to Lane, he admitted calling McAllaster to the meeting as the time and place in question, and that Bolin was present. No proper purpose for the meeting was ever announced to McAllaster or given by Lane in his testimony. However, Lane did say he was well aware of McAllaster's union sympathies based on reports to Lane from other desk clerks about McAllaster. According to Respondent's witness, Bolin, an employee on the property for 10 years, and at the time of the meeting, a supervisor, the primary purpose of the meeting was to caution McAllaster about distributing union literature during worktime. The conversation between the three then changed to cover McAllaster's complaints about the RWP program. Bolin admitted meeting McAllaster as a

little paranoid. Both supervisors testified that in accord with their supervisors' training, they merely told McAllaster that benefits could increase, decrease, or stay the same depending on negotiations.

I credit McAllaster's account of the meeting and find the violations as alleged. While there is some question as to whether McAllaster was an open union supporter at the time of the meeting, I assume without finding that he was. So Respondent asks (fiMDBUfl*ERR17*fiMDNMflBr. 7)fiMDBUfl*ERR17*fiMDNMfl, ''[W]hy would Lane ask for McAllaster's position on the Union when he already knew it.'' I cannot speculate on Lane's motivation or mental processes. However, I find that the statements threatening loss of benefits, under the circumstances found here, are coercive. See *Aluf Plastics*, 314 NLRB 706, 707–708 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17*fiMDNMfl; and *Minette Mills*, 305 NLRB 1032 (fiMDBUfl*ERR17*fiMDNMfl1991)fiMDBUfl*ERR17*fiMDNMfl. *Compare, Liquitane Corp*., 298 NLRB 292, 296–297 (fiMDBUfl*ERR17*fiMDNMfl1990)fiMDBUfl*ERR17*fiMDNMfl.

c. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*ERR17*fiMDNMfl*

In support of this allegation that Respondent's supervisor, Robert Hamilton, solicited grievances with an implied promise to remedy same, the General Counsel relies again on the testimony of McAllaster. He testified that in early May, Supervisor Robert Hamilton, who did not testify, told McAllaster who was working at the time, that a Hilton executive was on the property, and that there would be a meeting the following day. The executive wanted to know what could be done to stop the union activity, but McAllaster said that the union activity could not be stopped, that it was on the go and they should all get used to it. Hamilton persisted, saying, there must be something that could be done to stop the union activity. McAllaster relented, saying that reinstatement of the employees terminated under PEP and removal from the property of certain managers who initiated the terminations like Hughes and Santo, might be sufficient to ''turn this thing around'' (fiMDBUfl*ERR17*fiMDNMflTr. 333)fiMDBUfl*ERR17*fiMDNMfl. Hamilton concluded the conversation by saying he doubted that these things would happen, but that he would pass the information to the unnamed Hilton executive.

In analyzing the evidence, I note that McAllaster's testimony is undisputed. Moreover, I draw an adverse inference from Hamilton's failure to testify. *Douglas Aircraft Co*., 308 NLRB 1217 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fiMDNMfl. In agreement with the General Counsel, I find that Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl when in the middle of the campaign, Hamilton solicited grievances as conduit or agent for the unidentified Hilton executive. It was the executive's call as to whether the grievances were to be corrected, but there was enough of an implied promise by Hamilton that the grievances, in whole or in part, would be corrected as to violate the Act. *Cutting, Inc*., 255 NLRB 534 (fiMDBUfl*ERR17*fiMDNMfl1981)fiMDBUfl*ERR17*fiMDNMfl.

d. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*ERR17*fiMDNMfl*

This allegation concerns the testimony of Vicky Lopez with respect to Hamilton directing that she remove a prounion button form her clothing. [A picture of the pin was omitted from publication.] A former front desk clerk for 3 years, Lopez left Respondent's employment in June. Shortly before she left, Lopez had a conversation with Hamilton who told her to remove a prounion button from her tie. As this conversation occurred about 4 p.m. and Lopez was not scheduled to start work for an hour, she at first refused to remove the button, but then removed it in accord with Hamilton's order before she started work. The pin in question is in the record: (fiMDBUfl*ERR17*fiMDNMflU. Exh. 33.)fiMDBUfl*ERR17*fiM

Again the evidence from Lopez is undisputed.[8] Respondent writes (fiMDBUfl*ERR17*fiMDNMflBr. 11)fiMDBUfl*ERR17*fiMDNMfl desk agent and [because] her job required perpetual customer contact,'' Hamilton's request that Lopez remove the button was both reasonable and in conformity with lawful Hotel policy.'' I disagree. I will have occasion below to revisit the issue of wearing union buttons and other insignia. For now, it suffices to say that the wearing of such insignia may not be prohibited unless the employer establishes that ''special circumstances'' are present which justify the restrictions. *St. Luke's Hospital*, 314 NLRB 454, 435 (fiMDBUfl*ERR17*fiMDNMfl1994)fi*Corp*., 314 NLRB 732, 733–734 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*

In the instant discussion, Respondent does not assert any special circumstances. Indeed, it would be difficult to imagine any so compelling as to justify the removal of union insignia 1 hour before the employee began work.

e. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMfld)fiMDBUfl*E*

According to Lopez, in June, she had a conversation with Carolyn Micke, hotel assistant manager for 5 years and employee on the property for 10 years. Micke called Lopez into her office while both were on worktime, and asked Lopez if her preexisting problems with some medical bills had ever been resolved. Bluntly, Lopez replied that she could not wait until the Union came in so she would not have any more similar problems and if she did have any similar problems, at least she would have some help with them. To this Micke replied, ''Baron Hilton would close the hotel, before he would allow the Union to come in.''

According to Micke testifying as Respondent's witness, she recalled the conversation in question with Lopez, and even Lopez expressing a fear that her bankruptcy could result form medical bills not paid by the insurance company. Then when Lopez made the remark about change when the Union came in, Micke testified that she only remarked that a union victory would not guarantee better benefits. That would depend on what was negotiated. More specifically, Micke denied making the remark about what Baron Hilton would do.[9]

I credit Lopez here, finding Micke's statement to be part of a general pattern of supervisory activity in response to the union campaign. The threat of hotel closure is the sort of threat condemned in *NLRB v. Gissel Packing Co*., 395 U.S. 575 (fiMDBUfl*ERR17*fiMDNMfl1969)fiMDBUfl*ERR17*fiMDNMfl, because 288 NLRB 518, 534 (fiMDBUfl*ERR17*fiMDNMfl1988)fiMDBUfl*ERR17*fiM 833 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl. Compar *fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl*fiMDBUfl*ERR17*fi* 869 (fiMDBUfl*ERR17*fiMDNMfl6th Cir. 1993)fiMDBUfl*ERR17*fiMDNMfl Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDB

[7] This allegation was added to the complaint by amendment on the first day of hearing (fiMDBUfl*ERR17*fiMDNMflTr. 12–13)fiMDBUfl*ERR17*fiMDNMfl.

[8] I note that Lopez was terminated by the hotel for failing to follow company policy.

[9] In testimony against her own self-interest, Micke testified she would not have made the statement attributed to her by Lopez because at the time, allegations had been made that she was harsh and difficult to work with. As a result, she testified that she was attempting to build rapport with employees by making an effort not to discuss the Union. Assuming without finding that such allegations had been made before Micke's conversation with Lopez, I can only spec-

f. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMfle)fiMDBUfl*ERR17*fiMDNMfl*Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNM*

Here the General Counsel alleges that on June 29, Barbara Skaug and Thomas Sullivan solicited grievances from employees and made certain threats to employees at a meeting for housekeeping employees. At the time Skaug was executive housekeeper, having first been promoted to that office by Santo and subsequently terminated also by Santo, and all before the election. She did not testify, but Sullivan, a representative of Respondent's human relations department, did testify.[10]

I begin with General Counsel's witness Guadalupe Velasco, an employee on the property between June 1988 and January. Velasco worked as a maid in the housekeeping department. About 10:30 a.m. on June 29, Velasco and between 30 to 50 other employees attended an employee meeting with Skaug and Sullivan. Skaug told employees that she wanted all employees to be happy and the doors to her office were always open for employees to discuss their complaints. Sullivan added that he did not want any strangers to be present and that negotiations would start from zero and employees could lose what benefits they already had such as free parking and free laundry of uniforms.

Employed on the property since 1979, Sullivan testified as Respondent's witness. As to the June 29 meeting, he noted that his remarks were made from a prepared text (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 14)fiMDBUfl*ERR17*fiMDNMfl. I have examined the notes of Sullivan's remarks and reviewed the *Taylor-Dunn Mfg. Co.* case, 252 NLRB 799, 800 (fiMDBUfl*ERR17*fiMDNMfl1980)fiMDBUfl*ERR17*fiMDNMfl, enfd. 810 F.2d 638 (fiMDBUfl*ERR17*fiMDNMfl9th Cir. 1982)fiMDBUfl*E most recent case of *Lear-Siegler Management Service Corp.*, 306 NLRB 393 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fiMDNMfl. I find in this case that Velasco's testimony out of all the employees present does not show that Skaug and Sullivan were referring to threats of loss of benefits. Instead, I find a reference here to the normal give and take of negotiations, an exception to the pattern heretofore referred to. See *Mantrose-Haeuser Co.*, 306 NLRB 377 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fiMDNMfl. In light of this finding, I will recommend that all allegations in this segment be dismissed.

g. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflg)fiMDBUfl*ERR17*fiMDNMfl*Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNM*

According to the General Counsel's witness Trevino, Lane solicited grievances from her and two other employees during a conversation in early July at the hotel. The subject was a new meal deduction on Trevino's paycheck stub which Trevino told Lane was more evidence that the hotel was abusing employees. Lane denied that was the case, saying it was merely an accounting change, with no loss of net income. Then according to Trevino, Lane asked if there was anything Hughes could do to keep the Union out. Lane recalled the conversation, changing only insignificant details. As to whether he asked if there was anything Ron Hughes could do to keep the Union out, Lane answered, ''No, I can't recall that, no'' (fiMDBUfl*ERR17*fiMDNMflTr. 2105)fiMDBUfl*ERR17*fiMDNMfl. I credit the testimony of Trevino and for the rationale previously given for prior allegations where similar questions were asked, I find that Respondent with an implied promise to remedy same.

h. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflg)fiMDBUfl*E*

In this allegation, it is alleged that Gonzales solicited grievances and impliedly promised to remedy same. According to Velasco, in late July or early August, Labor Consultant Gonzales spoke to her and a few other housekeeping employees on the hotel floor where they had been working. Speaking to the employees, in Spanish, Gonzales told them that Skaug was no longer there, that she had been replaced by Pam Watts and the doors to Watts' office were open at all times so we could come in and tell her any complaints. Gonzales finished by saying that ''Watts would listen and help'' (fiMDBUfl*ERR17*fiMDNMflthe replacement of Skaug by Watts is its to violate the Act, an issue which I consider below)fiMDBUfl*ERR17*fiMDN testimony as a witness for the Union, Gonzales admitted that he had been present at the meeting and made the statements essentially as described by Velasco.

The Board has held that labor consultants such as Gonzales are agents of an employer when these consultants engage in unfair labor practices. See *Blankenship & Associates*, 306 NLRB 994 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fi the Employer had placed Gonzales in the position of a conduit where employees could reasonably believe that he speaks on behalf of management. *Three Sisters Sportswear Co.*, 312 NLRB 853, 864–865 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl* *dustries*, 311 NLRB 109, 110 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl* mony of Velasco which I credit, establishes that Gonzales solicited employee grievances, impliedly promising to remedy them in violation of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*E *Center at Vineland*, 314 NLRB 947, 950 (fiMDBUfl*ERR17*fiMDNMfl1994)fiM

i. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflh)fiMDBUfl*E*

The question presented here is whether Sullivan interrogated current employee Richard Brieger in violation of the Act. Brieger testified for the General Counsel that he has worked on the property for about 11 years and now works [illegible] August 12, about 2:30 p.m., Brieger went to Sullivan's office regarding a complaint against him by another employee. During the course of their conversation, Sullivan asked Brieger what he hoped to gain through union representation. Brieger responded that he expected benefits, job security, and better representation.

The General Counsel concedes (fiMDBUfl*ERR17*fiMDNMflBr. 20)fiMDI Brieger was an open union supporter. Not every inquiry directed to an employee on the subject of protected activities constitute a violation of the Act. See *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (fiMDBUfl*ERR17*fiMDNMfl9th Under the totality of circumstances, I find the questioning here was noncoercive. See *S. E. Nichols, Inc.*, 284 NLRB 556, 558 (fiMDBUfl*ERR17*fiMDNMfl1987)fiMDBUfl*ERR17*fiMDNMfl. He van to Brieger and I will recommend this allegation be dismissed. *Sunnyvale Medical Center*, 277 NLRB 1217 (fiMDBUfl*ERR17*fiMD

j. *Paragraphs 6(fiMDBUfl*ERR17*fiMDNMfli)fiMDBUfl*ERR17*fi*

Again the General Counsel alleges that on August 19, Brieger was interrogated by Supervisor Mark Smith, who is also alleged to have solicited grievances and given Brieger the impression that his activities were under surveillance. Ac- [illegible] cording to Brieger, he was talking to two other employees

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ulate that Micke let her guard down with Lopez, thereby giving credence to the claim that she was harsh and difficult to work with.

[10] It is not disputed that Sullivan is a managerial employee with actual or at least apparent authority to bind Respondent herein. See *Great America Products*, 312 NLRB 962 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl. (MMDBUfl*ERR17*fiMDNMfl See also Tr. 328 regarding a stipulation to Sullivan's status.)fiMDBUfl*ERR17*fiMDNMfl

about 2:30 p.m. on the day in question about an antiunion memo posted on the bulletin board when Smith, room services manager, an employee on the property for 11 years and Respondent witness, interrupted the conversation. Smith asked Brieger what he expected to get from the Union. Smith added that he especially wanted to know because Brieger had been telling everyone else what the Union was going to do for them (fiMDBUfl*ERR17*fiMDNMflTr. 322)fiMDBUfl*ERR17*fiMDNMfl. Then he added to all three employees, if you had any problems bring them to my attention so they can be corrected.

Because Brieger was an open union supporter, I will recommend dismissal of the unlawful interrogation and impression of surveillance allegations. However, contrary to Respondent (fiMDBUfl*ERR17*fiMDNMflBr. 24)fiMDBUfl*ERR17*fiMDNMfl, the credited testimony supports a finding that Smith solicited grievances with an implied promise to remedy and I find Smith violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDB

k. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflj)fiMDBUfl*ERR17*fiMDNMfl*

This allegation is based on a memo dated April 7 written by Hughes and circulated to all bargaining unit employees in which, the General Counsel contends, Hughes threatened employees with unspecified reprisals and implied that supporting the Union was futile. The memo reads as follows:

> April 7, 1993
>
> Dear Fellow Reno Hilton Employee:
>
> As you may have heard, the Carpenters Union is contacting our employees to try to get them to sign union cards. We are dedicated to making the Reno Hilton as successful for our employees as it is for our guests and the company. As a result, the hotel is strongly opposed to the attempts by the Carpenters Union to come into our hotel. That union can't do anything for you that you cannot do better for yourselves. The union would not benefit you in any way and could hurt you seriously. It could interfere with our ability to make this the best possible place to work and block free communication between us.
>
> What this boils down to is: refuse to sign union authorization cards and avoid a lot of unnecessary trouble. You will always do better with us without a union, which can't and won't do anything for you except jeopardize your jobs. If you want job security and a good place to work under the best terms and conditions, reject the union.
>
> Sincerely,
>
> /s/ R. L. Hughes
>
> Ronald L. Hughes
> President
>
> [G.C. Exh. 16.]

Respondent directs my attention to Section 8(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*ERR17*fiMDNMfl of the Act and to the Board's decision in *Airporter Inn Hotel*, 215 NLRB 824 (fiMDBUfl*ERR17*fiMDNMfl1974)fiMDBUfl*ERR17*fiMDNMfl. I have reviewed the case, and read the memo in question. Based on all that, I agree with Respondent, and I will recommend the case be dismissed because of insufficient evidence.[11]

l. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflk)fiMDBUfl*E*

The complaint alleges that Supervisor Terry Bolin threatened McAllaster with reprisals if he continued to distribute prounion campaign literature on hotel property. According to McAllaster, in late afternoon on a day in mid-May, he was approached by Supervisor Terry Bolin. Bolin told McAllaster he thought McAllaster was passing out and posting union literature on the property. McAllaster admitted that he was the one. Then Bolin referred to hotel policy as prohibiting this activity. Bolin testified that he said to McAllaster that he had to stop distributing union literature only while he was on duty.

Without regard to whether Bolin added a statement to McAllaster that "good things happen to those people who do good things, and bad things happen to those people who do bad things," a statement Bolin denied making, I find the evidence supports the allegation. As will be recited in greater detail below, Respondent's no-solicitation and no-distribution policy was disparately enforced. Thus, at certain times, Respondent posted antiunion banners in the gray area. I find that Bolin's statement was an unlawful attempt to enforce in an unlawful manner, Respondent's policy and this violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDB 313 NLRB 462, 463 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17* NLRB 228, 238–239 (fiMDBUfl*ERR17*fiMDNMfl1977)fiMDBUfl*ERR17*fiM

m. *Paragraph 7(fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*E*

It is alleged here that on or about July 23 Supervisor Robin Nichols disparately enforced Respondent's no-solicitation/no-distribution policy. I begin with a recitation of the policy as contained in the Reno Hilton Employee Handbook, page 34 (fiMDBUfl*ERR17*fiMDNMflU. Exh. 4)fiMDBUfl*ERR17*fiMD

> NO SOLICITATION AND DISTRIBUTION POLICY FOR EMPLOYEES AND NON-EMPLOYEES
>
> Persons who are not employees of Reno Hilton are not permitted to solicit employees or distribute written materials on our property at any time, except as provided below.
>
> No employee may distribute literature in work areas at any time or solicit another employee in any area of the Hotel during his or her working time or during the other employee's working time. No employee may solicit other employees at any time in gaming, meeting, convention, exhibit, or recreational areas open to guests and/or the public.
>
> Working time includes all time during which an employee is assigned to or engaged in the performance of job duties, but does not include breaks, lunch periods during which time the employee is not assigned to or expected to perform any job duties.
>
> Non-employees who are patrons of restaurants or bars open to guest and the public and off-duty employees may engage in such activities with off-duty employ-

[11] I also note the case of *Crown Cork & Seal Co.*, 36 F.3d 1130 (fiMDBUfl*ERR17*fiMDNMflD.C. Cir. 1994)fiMDBUfl*ERR17*fiMDNMfl. There beca Board's order, I do not rely on it.

ees, provided they act in a non-disruptive manner consistent with the customary use of those areas.

The purpose of these rules is to prevent interference with and disruption of the work of our employees and to maintain our operation at peak efficiency at all times for the convenience and benefit of our employees, our guests, and the public.

Nothing in that rule nor in Respondent's policies and procedure manual (fiMDBUfl*ERR17*fiMDNMflR. Exh. 6)fiMDBUfl*ERR17*fiMDNMfl prohibits employees from leaving material in the employee breakroom. In its brief, Respondent directs my attention to the testimony of Lynn Wright, Respondent's director of human resources since July 19. Prior to that, Wright had been employed at the Reno Flamingo Hilton performing similar duties. According to Wright, she removed unattended clutter including union material from the cafeteria, locker rooms and employee breakrooms on a regular basis out of a sense of courtesy to the 2500 employees for whom the breakroom is available and to the people who have to clean the areas (fiMDBUfl*ERR17*fiMDNMflTr. 103)fiMDBUfl*ERR17*fiMDNMfl. Contrary to Respondent, I find no evidence that Wright, ''upon coming to Reno Hilton, . . . promulgated a rule prohibiting employees from leaving stacks of materials unattended in the cafeteria, breakroom and locker rooms.'' There was never a printed notice to employees or supervisors, nor an effective oral promulgation of the rule. Instead there was an ad hoc practice which varied by supervisor as to just what was meant by clutter. Thus, is some cases Avon or Tupperware catalogs, newspapers, magazines, or pocketbooks would be permissible even if left unattended. However, union material, if left unattended was always subject to confiscation, no matter how high ranking the manager and no matter how remote the duty of cleaning the breakroom.

I turn next to the specific allegation.

Trevino had placed union flyers on the walls and left others on the table in the front office employee breakroom, after which Trevino began to watch television on her break. Then Robin Nichols, Respondent's credit manager for 3-1/2 years and employee on the property for 16 years, entered the room, read the flyers, and began to remove them from the walls and tables. When Trevino protested, Nichols responded that according to personnel, no information was to be left in the breakroom regarding the Union. Nichols, Respondent's witness, testified she was only enforcing a rule that no material was to be posted on the walls and no material was to be left on the table unattended.

Respondent's no-distribution policy as described by Wright above is of doubtful validity because it was never officially promulgated or announced to employees and because it attempts to regulate distribution in nonwork areas. *United Aircraft Corp*., 139 NLRB 39 (fiMDBUfl*ERR17*fiMDNMfl1962)fiMDBUfl*ERR17*fiMDNMfl, enfd. 324 F.2d 128 (fiMDBUfl*ERR17*fiMDNMfl Cir. 1963)fiMDBUfl*ERR17*fiMDNMfl, cert. denied 376 U.S. 951 (fiMDBUfl*ERR17*fiMDNMfl1964)fiMDBUfl*ERR17*fiMDNMfl. Further any alleged presumption of validity is rebutted by the ''invocation of the alleged rule at the time of intensive union activity, existence of other kinds of solicitation during worktime and a pattern of conduct hostile to organizational efforts in violation of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl. *Peyton Packing Co.*, 49 NLRB 828 (fiMDBUfl*ERR17*fiMDNMfl1943), enfd. 142 F.2d 1009 (fiMDBUfl*ERR17*fiMDNMfl1944), cert. denied 323 U.S. 710 (fiMDBUfl*ERR17*fiMDNMfl1944); *Essex Wire Corp.*, 169 NLRB 455 (fiMDBUfl*ERR17*fiMDNMfl1967)fiMDBUfl*ERR17*fiMDNMfl.

After all of the above, I find that Nichols' conduct violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl as alleged. Nichols' conduct was pursuant to the alleged rule. See *Romar Refuse Removal*, 314 NLRB 658, 665 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17*fiMDNMfl; a 599 (fiMDBUfl*ERR17*fiMDNMfl1984)fiMDBUfl*ERR17*fiMDNMfl.

n. *Paragraph 7(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*E*

Continuing the narrative from the above allegation, it is alleged that Dean Lane also violated the Act by reiterating to Trevino what Nichols had told her. Dissatisfied with what Nichols had said, Trevino on the same day went to Lane to ask permission to leave union material in the breakroom, especially since other employees had left other kinds of material there with impunity. At first Lane said Trevino could leave union material in the breakroom, but later in the day, he said he had been wrong and that Trevino could not leave union material there. Lane denied speaking to Trevino twice on the subject, as he could not ''recall'' talking to anyone in personnel regarding the rule about leaving material in the breakroom. Lane's testimony both on direct and cross-examination revealed a very different understanding of the no-distribution rule from that described by Wright. Lane would generally not remove books and novels. On unlisted occasions, he would not remove Girl Scout cookie catalogs or Avon catalogs. Even as to election material prounion or procompany, ''sometimes he would put it in a pile and put it in a nice little stack on a coffee table,'' thereby deviating from the company policy on occasion (fiMDBUfl*ERR17*fiMDNMflTr. 2102–2 based his degree of enforcement of the alleged policy on how messy the room appeared to him and on how much time he had to clean the room (fiMDBUfl*ERR17*fiMDNMflTr. 2115)fiMDBUfl*ER

Lane is responsible for 475–500 employees. Wright directly supervises far fewer employees, but is responsible for the well being of all employees. To suggest that either Lane or Wright had a regular practice of cleaning out the breakroom which practice, if it exists, is unrelated to the union campaign is preposterous. In any event, I find that for the same reasons indicated in the prior segment of this decision, Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl* statements of Lane to Trevino.

o. *Paragraph 7(fiMDBUfl*ERR17*fiMDNMfld)fiMDBUfl*E*

It is also alleged that Respondent violated the Act when Bolin made certain statements to McAllaster. This allegation has been adequately discussed with respect to paragraph 6(fiMDBUfl*ERR17*fi above and further discussion is unwarranted.

p. *Paragraph 8*

In this allegation, the General Counsel alleges that Respondent maintained and enforced a rule prohibiting employees from wearing unauthorized pins or insignia on their clothing or person during worktime and/or in work areas.

In paragraph 2(fiMDBUfl*ERR17*fiMDNMfld)fiMDBUfl*ERR17*fiMDNMf Board's view that absent special circumstances, union pins, buttons, or other insignia cannot be banned by an employer regardless of whether an election campaign is in progress. In its brief, Respondent admits the existence of the challenged policy and correctly points out that about 2 weeks before the election, Respondent modified the policy to permit employees to wear any button or insignia they choose. Apparently after the election on November 4, Respondent reverted to its former policy.

[illegible] Act as alleged. Respondent has the burden of showing sub-

stantial evidence of special circumstances and none have been shown. See *Windmiller Electric*, 306 NLRB 664 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fiMDNMfl. As to *Hertz Rent-A-Car*, 305 NLRB 487 (fiMDBUfl*ERR17*fiMDNMfl1991)fiMDBUfl*ERR17*fiMDNMfl, relied on by the Respondent, the decision is not controlling as it was issued pursuant to a remand of the Sixth Circuit. I am bound by the Board's view of the law whether or not enforced by the U.S. Court of Appeals. *Iowa Beef Packers*, 144 NLRB 615 (fiMDBUfl*ERR17*fiMDNMfl1963)fiMDBUfl*ERR17*fiMDNMfl.

q. *Paragraphs 9(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl and (fiMDBUfl*ERR17*fiMDNMfle)fiMDBUfl*ERR1*

The question presented is whether an April 7 announcement regarding an employee picnic on June 11 and 12 violated the Act. In support of the allegation, the General Counsel offered a memo from Hughes to employees which reads as follows:

> From: Ronald Hughes
> Location: President's Office
> Date: April 7, 1993
> Subject: *EMPLOYEE PICNIC—JUNE 11 AND 12*
>
> By now you have all heard that the P.E.P. Process is completed. I would like to take this opportunity to again express my appreciation to each and every one of you for your cooperation, support, and dedication to the project and to the Reno Hilton. To further express our gratitude for all of your hard work, the Reno Hilton invites you and your family to a fun filled day at Wild Island.
>
> This year's employee picnic at Wild Island will be held on Friday, June 11 and Saturday, June 12, 1993 and will include lunch, music, the Wild Island Water Slides, Raceway, and Miniature Golf.
>
> Additional information will be available to you through Human Resources in the near future.
>
> I sincerely hope that you and your family will be able to join us for this fun filled day. Again, thank you for your support in the last few months. See you at WILD ISLAND!!!!
>
> /s/ R.L. Hughes
> [G.C. Exh. 17.]

In considering the timing of the memo, I note that Hughes was aware of the union organizing campaign as of April 7. The general rule is that an employer in the midst of a union organizing campaign is required to proceed as it would have done had an organizing campaign not been in progress. *Centre Engineering, Inc*., 253 NLRB 419, 421 (fiMDBUfl*ERR17*fiMDNMfl1980)fiMDBUfl*ERR17*fiMDNMfl. The Board does not automatically find grants of benefits during an organizational campaign to be unlawful, but it presumes that such action will be objectionable, ''unless the Employer establishes that the timing of the action was governed by factors other than the pendency of the election.'' *American Sunroof Corp*., 248 NLRB 748 (fiMDBUfl*ERR17*fiMDNMfl1980)fiMDBUfl*ERR17*fiMDNMfl. The basis for the Board's rules is found in *NLRB v. Exchange Parts Co*., 375 U.S. 405, 409 (fiMDBUfl*ERR17*fiMDNMfl1964)fiMDBUfl*ERR17*fiMDNMfl, where the Court stated:

> The danger inherent in well-timed increases in benefits is the suggestion of a first inside the velvet glove. The employees are not likely to miss the inference that the source of the benefits from which future benefits must flow and which may dry up if it is not obliged.

Although guided by the above and finding that the General Counsel has established a prima facie case, I will recommend that the allegation be dismissed. Hughes' memo neither expressly nor implicitly conditioned the picnic on the election outcome. See *LRM Packaging*, 308 NLRB 829, 830 (fiMDBUfl*ERR17*fiMD Furthermore, it was part of the Hilton corporate practice to hold annual picnics and I credit Santo's testimony regarding the Las Vegas Hilton picnic. Further and most importantly, I note the testimony of Kathy Rybar, a Hilton Corp. vice president and Respondent witness, and of Santo, that it was conveyed to employees shortly after Respondent took over from Bally's and long before the union entered the picture that an employee picnic was contemplated. That a firm date was not announced to employees in the fall just a few months after Hilton took over, is of little moment. In light of the above, I find that Respondent has effectively rebutted the General Counsel's case. *NLRB v. Tommy's Spanish Foods*, 463 F.2d 116, 119 (fiMDBUfl*ERR17*fiMDNMfl9th Cir. 1972)fiMDB the picnic itself was lawful.

r. *Paragraphs 9(fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*ERR17*

In further asserting that Respondent made an unlawful grant of benefits, the General Counsel directs my attention to a five-page memo from Hughes to employees dated May 14 (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 19)fiMDBUfl*ERR17*fiMDNMfl memo were layoffs, ''Employees with the least seniority in their job classification within the outlet or work area affected, shall be laid off first'' (fiMDBUfl*ERR17*fiMDNMflp. 4)fiMDBUfl* ment, reinstated as of April 14 (fiMDBUfl*ERR17*fiMDNMflp. 5)fiMDBUfl*E represented changes from prior policy in that the layoffs under PEP had not been by seniority and, as noted in the facts, above, Bally's board of adjustment had been discontinued shortly after Respondent took over. The question is, do either or both of these changes violate the Act?

As in the proceeding section, I find a prima facie case based on the timing of the benefits. Also as in the proceeding sections, I find that Respondent has effectively rebutted this prima facie case and I will recommend dismissal. First, I read Hughes' memo as a general statement of policy discussing vacation benefits, complimentary rooms at other Hilton properties (fiMDBUfl*ERR17*fiMDNMflwhen available)fiMDBUfl*ERR17* (fiMDBUfl*ERR17*fiMDNMflit's continuing)fiMDBUfl*ERR17*fiMDNMfl, h and improvements in medical and dental coverage)fiMDBUfl*ERR17*fiMD Exh. 19)fiMDBUfl*ERR17*fiMDNMfl. In sum, the message conveyed to emp not uniformly positive, and not uniformly designed to enhance employee benefits. Instead, it was a common sense response to employee questions not particularly related to the union campaign.

I agree with Respondent that the case of *William Litho Service*, 260 NLRB 773, 774 (fiMDBUfl*ERR17*fiMDNMfl1982)fiMDBUfl*E case, the Board stated:

> The Act does not require an employer pending an election to refrain from making economically motivated decisions involving business matters or any changes in working conditions necessary to the continual and orderly operation of the business, absent a promise of benefits conditioned upon rejection of the Union and/or causal connection between such changes, and the rights accorded to employees by the Act. Normal business decisions must continue to be made and frequently are necessary for the efficient operation of an enterprise,

even though it occurs during an organizational campaign.

As to the reinstatement of the board of adjustment, I note that its discontinuance was made by Hughes' predecessor, Sherlock. Similarly, PEP was not the creation of Hughes, and its results affecting employee morale may have led to the departure of Giovenco. For both of these policies, it makes no sense that Hughes could not change policies for the perceived good of the Employer, when Hughes had not been responsible for them to begin with.

s. *Paragraph 9(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*ERR17*fiMDNMfl and paragraph 9 (fiMDBUfl*ERR17*fiMDNMflCase 32–CA–13602)fiMDBUfl*ERR17*fiMDNMfl*

Like Respondent's brief, page 37, I will consider here whether the quality action teams are either an unlawful grant of benefit and/or a dominated labor organization as alleged in paragraph 9 of the second complaint.

The quality action teams concept was not a new concept to Santo as he had been involved with them in prior jobs at the Las Vegas Hilton and at the Reno Flamingo Hilton. However, at the Respondent's property, the concept appeared to arise not so much out of Santo's prior experience as from recommendations made by Labor Consultant Gonzales working at the property in the spring as part of the Burke Group. Gonzales concluded that quality action teams would be an appropriate remedy for poor communication and poor morale among Respondent's employees. Accordingly, in late May, Santo sent identical memos to employees in various segments of Respondent's employment such as housekeeping, front desk, bell desk, room reservations, and food service (fiMDBUfl*ERR17*fiMDNMflU. Exhs. 1, 2, and 3)fiMDBUfl*ERR17*fiMDNMfl. A representative memo reads as follows:

To: FRONT DESK/BELL DESK EMPLOYEES
From: TONY SANTO
Location: EXECUTIVE OFFICES
Date: MAY 28, 1993
Subject: *QUALITY ACTION TEAM*

We are currently looking for hourly employees to join our Quality Action Team program. As a participating member of this committee you will attend monthly meetings to discuss such topics as:

—Safety
—Supplies and Equipment
—Service Enhancement
—Schedules
—Communication
—Morale

The team is limited to 9 members, so please contact your department head as soon as possible if you would like to participate. You will be paid for your attendance.

TS:sg

cc: Dean Lane
Bryant Godfrey
Terry Bolin
[U. Exh. 1.]

Once participants were selected, Sullivan, the human relations manager, played a major role as per the request of Rybar, who shared Santo's desire to improve communication with employees.

In considering whether quality action teams are an unlawful grant of benefits, I find that for the same reasons as stated in preceding sections, that the quality action team is not an unlawful grant of benefits. Accordingly, I will recommend it be dismissed.

I turn next to consider whether quality action teams violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(f it is an unfair labor practice for an employer ''to dominate or interfere with the formation or administration of a labor organization.'' The starting point for this inquiry is the Board's rulings in *Electromation, Inc.*, 309 NLRB 990 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fiMDNMfl, enfd. 35 F.3 *Pont & Co.*, 311 NLRB 893 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ER

Following the argument advanced by the General Counsel (fiMDBUfl*ERR17*fiMDNMflBr. 91)fiMDBUfl*ERR17*fiMDNMfl, I make th action teams are ''labor organizations'' under Section 2(fiMDBUfl*ERR17*fiM the Act. First, I look to the statute:

> Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

As is true for most cases involving the instant issue, there is no question that employees participate in the quality action teams and that they discuss safety issues, service enhancement, and schedules, i.e., hours of employment. See *E. I. du Pont & Co.*, supra, 311 NLRB at 894. Accordingly, I turn to the ''dealing with'' aspect of the statute, a requirement which Respondent contends has not been met.

In *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (fiMDBUfl*ERR17*fiMDNM leading case in this area, the Court held that the phrase ''dealing with'' as in Section 2(fiMDBUfl*ERR17*fiMDNMfl5)fiMDBUfl*ERR broader than ''collective bargaining.'' 360 U.S. at 210–213. In *Electromation*, supra, the Board stated that the term, ''dealing with'' must be viewed as meaning a ''bilateral mechanism involving proposals from the employee committee concerning the subjects listed in Sec. 2(fiMDBUfl*ERR17*fiMDNMfl5)fiM real or apparent consideration of these proposals by management.'' 309 NLRB at 995 fn. 21. In the *du Pont* case, the Board commented further on the subject:

> The ''bilateral mechanism'' ordinarily entails a pattern or practice in which a group of employees, over time, makes proposals to management, management responds to these proposals by acceptance or rejection by word or deed, and compromise is not required. If the evidence establishes such a pattern or practice, the element of dealing is present. However, if there are only isolated instances in which the group makes ad hoc proposals to management followed by a management re-

[12] *Electromation*, supra, deals with employee committees in a nonunion setting while *E. I. du Pont*, supra, deals with the same issue where employees have selected an exclusive collective-bargaining representative.

> sponse of acceptance or rejection by word or deed, the element of dealing is missing. [311 NLRB at 894.]

With the above legal principles as a guide, I turn to the record to determine exactly what occurred at various quality action team meetings. In the notes of public area housekeeping (fiMDBUfl*ERR17*fiMDNMflPAH)fiMDBUfl*ERR17*fiMDNMfl meeting of June 25, I note the four high level supervisors present, Skaug, Son Ma (fiMDBUfl*ERR17*fiMDNMflSkaug's assistant)fiMDBUfl*ERR17*fiMDNMfl, Lane, and Sullivan. The subjects discussed including safety concerns, rotation of work assignments and transfer to other Hilton properties (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 4(fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl 12 include subjects of rotation of work assignments with cross-training and Lane's announcement that a Hilton victory in a union election at Laughlin Flamingo Hilton is a ''victory for our employees who have determined that working directly with management to iron out difficulties is preferable to outside representation'' (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 4(fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl housekeeping quality action team meeting, the reference to the Laughlin election was repeated and there was further discussion of safety and work equipment (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 4(fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl the quality action team meeting (fiMDBUfl*ERR17*fiMDNMflhousekeeping)fiMDBUfl*ERR17*fiMDNMfl of August 3, management agreed to reduce the number of rooms assigned for cleaning by employees on days of large number of check-outs (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 4(fiMDBUfl*ERR17*fiMDNMfle)fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl.

For the room reservations department, the quality action team meeting of July 13 discussed issues like how employees are to be evaluated and merit raises awarded and scheduling of worktime (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 5(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl ity action team meeting of June 28, staffing and scheduling issues were discussed (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 6(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl representative of the quality action teams minutes (fiMDBUfl*ERR17*fiMDNMflG.C. Exhs. 4–10)fiMDBUfl*ERR17*fiMDNMfl and further recitation of examples would serve only to further elongate this decision. It suffices to say that Respondent was not ''brainstorming'' with its employees; it was not considering employee proposals on an isolated or ad hoc basis. Respondent was dealing with its employees in violation of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl2)fiMDBUfl*ERR17*fiMDNMfl 307 NLRB 752, 753 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fiMDNMfl.

t. *Paragraph 9(fiMDBUfl*ERR17*fiMDNMfld)fiMDBUfl*ERR17*fiMDNMfl*

In this allegation, the General Counsel alleges that on or about June 2, Respondent unlawfully announced to its employees that they would be receiving a new dental plan, effective July 1. In its brief, page 41, Respondent concedes that the announcement was made, but contends that it had decided to offer a new dental plan prior to the onset of union organizing activity.

According to Wright, testifying as a Respondent witness, the Reno Flamingo Hilton maintained a dental insurance plan for its employees with a company called SISCO. Although Hilton used SISCO for its other properties within the State of Nevada, it was in the Reno area that employees experienced problems with SISCO because under the fixed fee schedule, it paid only a set amount for a dental procedure, even when the dentist charged more. According to Wright, dentists in the Reno area typically charged higher rates than other dentists in Southern Nevada and elsewhere. Consequently, employees had higher copayments and this led to complaints. Apparently, when Hilton took over the Bally property it brought in the SISCO plan for its new employees, because there was then no alternative plan available.

Wright's complaints regarding SISCO ultimately came to the attention of Lynn Hein, Hilton vice president in charge of benefits administration for all Hilton properties and Respondent witness. Hein worked with Kybar beginning in late December 1992 to find an alternative to SISCO. In early 1993, Prudential Insurance Co. entered the State of Nevada with a dental insurance plan and their rates were more competitive compared to SISCO. Hein was acquainted with the Prudential Plan as he had been negotiating with it for coverage at certain Hilton properties in the Los Angeles area (fiMDBUfl*ERR17*fi Exhs. 15 and 16)fiMDBUfl*ERR17*fiMDNMfl. Accordingly, in the spring began between Hein and Prudential for coverage at the Reno Hilton and Reno Flamingo (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 42)fiMDB the new plan was implemented for employees at both Reno hotels. Because there was some difference in the scope of coverage—e.g., SISCO offered a vision insurance plan, while Prudential offered orthodontic—Respondent decided to offer both plans so employees could choose what was best for them. However, the cost of both plans to Hilton remained about the same.

In light of the above, I am satisfied with the testimony and other evidence presented by Respondent and find that Respondent planned to offer an alternative dental plan before the union campaign began. There is no evidence that the announcement or implementation of the Prudential Plan was timed to influence the election. Accordingly, the General Counsel's prima facie case based on the timing of the benefits is effectively rebutted, and I will recommend dismissal of this allegation. *Capital EMI Music*, 311 NLRB 997, 1012 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl.

u. *Paragraph 9(fiMDBUfl*ERR17*fiMDNMflf)fiMDBUfl*E*

The General Counsel alleges in this segment that on or about July 1, Respondent announced to employees that it was implementing a merit review program under which employees would be eligible to receive wage increases, and on the same date did implement said merit review program. I begin with a Hughes' memo to employees of July 1, which reads as follows:

> July 1, 1993
>
> Dear Fellow Employees:
>
> At the meetings that Skip Avansino and I had with many of you in May, questions were raised about when, or if, the wage freeze would end. We advised employees at the meetings that we were working on the solution and hoped we would have an answer by July 1st.
>
> Today, July 1, I am pleased to inform you that we have the solution to the wage freeze here.
>
> Briefly, let me explain how the solution will affect you personally.
>
> 1. All employees who received their last increase in July 1992, will receive a merit review and a wage increase, effective July 1, 1993.
>
> 2. All employees who have not received a wage increase since the ''freeze'' on August 1, 1992, will re-

[13] I have read and considered the opinion of the court in *NLRB v. Peninsula General Hospital Medical Center*, 36 F.3d 1262 (fiMDBUfl*ERR17*fiMDNMfl4th Cir. 1994)fiMDBUfl*ERR17*fiMDNMfl, where the court refused to enforce the Board's decision. This case may be distinguished on its facts from the instant case.

ceive a merit review and a wage increase retroactive back to the date they should have received their annual review and wage increase. Employees who have changed their job position will receive a merit review and wage increase one year from the date of the job change.

3. ''Retroactive'' means that your increase will be effective as of the date that you would have received an increase prior to the wage freeze.

4. All eligible employees will receive their retroactive increases as a lump sum in a separate check.

5. Within the next few weeks, all supervisors and managers will receive training in how to conduct merit reviews, how to evaluate employee performance, and how to explain the details of the merit review program to you personally.

I will keep you advised of our progress in implementing our new merit review program. I sincerely appreciate your continued support and patience that you have exhibited during the last few months.

In addition, we will continue to address all the issues that you have raised thus far and will keep you informed of our progress.

Sincerely,

/s/ Ronald Hughes

Ronald L. Hughes
President
[G.C. Exh. 20.]

To put this issue in context, I consider the testimony of General Counsel's witness Frank Schenk, a current employee working as a convention porter and an employee on the property for 10 years. He testified that 4 to 6 months after Hilton took over, he and his supervisor, Joe Bautista, were in the employee cafeteria when the latter said the wage freeze might last ''maybe four years'' (fiMDBUfl*ERR17*fiMDNMflTr. 557)fiMDBUfl*ERR17*fiMDNMfl. Respondent called Bautista, a convention porter supervisor who had worked on the property for 7-1/2 years, to flatly deny the conversation as reported by Schenk. The Union also called current employee Suzette Shipman, a room reservations clerk and employee on the property for 16 years. She testified to a conversation with her supervisor, Jan Mooney, in August or September 1992, in Mooney's office, where Mooney said wages would probably be frozen 6 to 7 years until employees caught up with the other Reno casinos, which Shipman believed had been paying lower wages than Respondent (fiMDBUfl*ERR17*fiMDNMflTr. 837)fiMDBUfl*ERR17*fiMDNMfl. In her testimony, Mooney recalled talking to Shipman at the time and place in question, but denied the statement attributed to her. Mooney testified that she had no idea how long the wage freeze would last.

I credit Shenk and Shipman, finding as current employees, they are entitled to enhanced credibility. I also find they corroborate each other to establish at least there was no reason to believe the wage freeze was going to end when it did. In this case, I find Respondent has failed to rebut the General Counsel's prima facie case and I will find a violation of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl of the Act as a

In support of this conclusion, I note the wording of Hughes' memo whereby he strongly implies that the merit review program was a direct response to the complaints of employees made at a series of Hughes' meetings with employees held during worktimes, when there is no showing of such a practice predating the union campaign.

Admittedly, the evidence for this segment does not point uniformly in one direction or the other. As recited in the facts, I note the erroneous assumption by Respondent officials that Bally employees had received their annual pay raise in July 1992. I also note that in the spring, Respondent raised some pay rates allegedly to attract more qualified job applicants. Yet, on the other hand, there is evidence of two supervisors making predictions of several years of wage freeze, which of course would affect them as well as the employees to whom they spoke. I also note the bankrupt Bally business and the evidence that wage rates at Respondent property, even though frozen, were higher in some cases than comparable properties in the area. Rybar testified that based on a wage survey performed by the Hilton Corp., of Reno properties and other Nevada properties, there was no consistent pattern, in most cases Respondent salaries were at the upper levels, but in a few cases, the entry level was at a lower level.[14] I also note a memo from then director of human resources, Lynda Jackson, dated September 29, 1992, where she wrote in part,

> Employees whose wages are frozen because they exceed the maximum rate will continue to receive performance evaluations on an annual basis. [G.C. Exh. 39.]

In conclusion, I note Respondent's argument, brief, page 46, that the wage freeze was always intended to be temporary. I accept this argument, but find there is insufficient evidence to show that by ''temporary,'' was meant July 1. Instead the wage freeze could have ended after 4 years or even 6 or 7 years and still be characterized as ''temporary.'' In sum, I find that Respondent has not effectively rebutted the General Counsel's case, either as to the announcement and/or as to the implementation. Compare *House Raeford Farms*, 308 NLRB 368, 369 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR

3. Specific allegations (fiMDBUfl*ERR17*fiMDNMflCase 32–CA–136

a. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*E*

In this segment, the General Counsel alleges that Respondent violated the Act through its supervisor, Lane. First, on or about October 11, by impliedly promising employee, Sydney Conser that certain unspecified grievances would be remedied. Appearing as the General Counsel's witness, Conser is a current employee working as a room reservations agent and employed off the property since September 1978. She and Lane have been friends for years and on October 11, about 11:30 a.m., Lane called her into his office. With just the two of them present, according to Conser, Lane asked her how she felt about the Union. Lane explained he needed to talk to her about that subject, because Santo could not talk to everyone. Lane continued by asking Conser to give the Company another chance as new (fiMDBUfl*ERR17*fiMDNMflhealth was coming in a few days. Not only would it be better than

[14] The record contains two wage surveys, one completed in September 1992 (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 44)fiMDBUfl*ERR17*fiMDNMfl, early April (fiMDBUfl*ERR17*fiMDNMflU. Exh. 55)fiMDBUfl*ERR17*fiMDNMfl. Ne Respondent intended to lift its wage freeze. Nor can I determine with certainty why the second wage survey was done to begin with.

the current insurance, but he added that it would cost only about one-half of what it was costing now. Lane concluded by asking Conser to wait at least for 10 months and then if things did not get better, Lane would personally call the Union back in, i.e., the Culinary Union which was bigger than the Carpenters.

In his testimony, Lane affirmed that he and Conser had a good relationship and that he had conversation with her on the day in question on worktime. Lane admits he did most of the talking—about the new insurance provider, with insurance benefits about to increase and that PEP was dead, and that all of this is a ''step in the right direction'' (fiMDBUfl*ERR17*fiMDNMfl Tr. 2112)fiMDBUfl*ERR17*fiMDNMfl. He denied asking Conser to give the Company another chance, but did say (fiMDBUfl*ERR17*fiMDNMflshe should)fiMDBUfl*ERR17*fiMDNMfl cause things were getting better and would continue to get better. Lane also denied promising to call the Union if things were not better in a year, but could not ''recall'' if he made any reference to the Culinary Workers Union (fiMDBUfl*ERR17*fiMDNMfl Tr. 2113)fiMDBUfl*ERR17*fiMDNMfl.

To the extent there is any significant conflict between the version of Conser and the version of Lane, I credit Conser. Not only was she a current employee and a close personal friend, with no reason to fabricate, but Lane also had a pattern of making questionable statements to his subordinates. In light of the above, I find that Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl of the Act. *St. Francis Regency-Memphis*, 296 NLRB 259 fn. 2 (fiMDBUfl*ERR17*fiMDNMfl1989)fiMDBUfl*ERR17*fiMDNMfl fn. 5 (fiMDBUfl*ERR17*fiMDNMfl1982)fiMDBUfl*ERR17*fiMDNMfl.

In paragraph 6(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl2)fiMDBUfl*ERR17*fiMDNMfl employee to accept or reject an antiunion button. In support of this allegation, the General Counsel called Laura Ogaldez, a room rack clerk employed on the property for 16 years. According to Ogaldez, on October 26, Lane entered the rack room with Rybar and two other unidentified persons and observed some antiunion buttons on the counter. Lane said that Laura has volunteered to wear one, but she quickly said no. In his testimony, Lane essentially agreed with Ogaldez, and I credit her testimony.

In agreement with the General Counsel, I find that Lane's statement to Ogaldez was a form of illicit interrogation placing the employee in a position of declaring his or her sympathies. See *Kurz-Kasch, Inc.*, 239 NLRB 1044 (fiMDBUfl*ERR17*fiMDNMfl1978)fiMDBUfl*ERR17*fiMDNMfl. Cf. *House of Raeford Farms*, supra, 308 NLRB at 570.

In paragraph 6(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl3)fiMDBUfl*ERR17*fiMDNMfl, i Ken Vaughn, another supervisor, impliedly promised employee Ann Altaa Fulton that Respondent would remedy certain unspecified grievances. Fulton currently works in the front desk office and has been on the property since 1983. On October 16 or 17, about 6 p.m., Lane and Vaughn, the assistant director of front office operations, asked Fulton to come to Lane's office where they had a conversation. According to Fulton, Lane said that mistakes had been made and asked for 10 months to correct these mistakes. Lane added that PEP was over. Fulton responded that PEP had never concerned her that much, but wage reductions had concerned her and believed the Union could prevent this from happening in the future.

I credit Fulton's version though the accounts provided by Lane and Vaughn are similar. I find that the conversation violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl grievances will be remedied and there will be no need for the Union in the near future.

Finally in paragraph 6(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl on the sixth hearing day, it is alleged that on October 22, Lane told Shipman the hotel would remedy certain grievances if the employees did not select the Union. According to Shipman, about 2 p.m. on the day in question, Lane told her he just wanted to make two points. When Hilton took over, the Company made a lot of mistakes, including PEP, but he asked if she agreed that things were getting better since Hilton took over, and she said yes. Then he added if things were not better within 10 months, he would personally sign a union card. Although I credit Shipman over Lane's slightly different version, I find no unlawful promise to remedy grievances and I will recommend dismissal. See *Hyatt*

b. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*E

It is alleged here that on or about October 28 and 29, Supervisor Mike Wootan unlawfully required employees to accept or reject antiunion buttons. General Counsel's witness Leslie Schaffer, a food server in the buffet and a current employee on the property for 16 years, testified that on the 2 days in question, Wootan distributed to employees antiunion buttons—''Vote: [x] No Union'' (fiMDBUfl*ERR17*fiMDNMflU. Exh. 28) done immediately after the daily preshift meeting was over as each of about 25 employees walked past him.

Testifying as Respondent's witness, Wootan is the assistant director of food and beverage and an employee on the property for 7 1/2 years. Wootan flatly denied passing out buttons as described by Schaffer, testifying he gave buttons only to those employees who requested one, and about 10 employees requested one. I credit the testimony of Schaffer, finding that as a current employee she is entitled to enhanced credibility. I also find a pattern of supervisory conduct in this case which makes Wootan's testimony less credible. I also find the violation as was explained above, that requiring an employee to accept or decline a union button constitutes unlawful interrogation.

c. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*E

Here, the General Counsel alleges Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDB Tom McIntosh. In support of this allegation, the General Counsel called Venita Privitt, a current employee since March 1983 and assigned to work as a bank cashier, a nonbargaining unit position. On October 26, she was offered a vote no button at work by McIntosh and she heard him offer a button to Connie, a cocktail waitress who did not testify. Privitt's testimony was not disputed as McIntosh did not testify. For the same rationale expressed above, I find that Respondent violated the Act and I also find in agreement with the General Counsel, that the status of Privitt as a nonbargaining unit employee is irrelevant to the issue.

d. *Paragraphs 6(fiMDBUfl*ERR17*fiMDNMfld)fiMDBUfl*ERR17*f*

The complaint alleges another allegation similar to above, this time involving distribution of T-shirts and buttons. According to the General Counsel's witness Sooki Ha, a current employee working in public area housekeeping and employee on the property since 1981, in late October, her supervisor, Judy Ostoj, offered Ha both a vote no T-shirt and vote no buttons, explaining that the new manager, Mark Wate, wants everybody to have them.

Respondent witness Ostoj testified that she is a supervisor in public area housekeeping and has worked on the property for 13 years. She testified that because her husband was on strike with Greyhound, she felt uncomfortable communicating with employees about strike-related issues and had even received permission from Wright and Sullivan not to have to do so. Accordingly, she testified that she distributed the T-shirts and buttons only to employees who asked for one. I credit Sooki Ha. Ostoj's testimony is like that of Micke above, who did not want to be considered harsh and difficult to work with. Here, Ostoj's husband may have been on strike, but I nevertheless find she said and did what Ha reported. Accordingly, I find Respondent violated the Act.

Ha also testified that in late October she asked Ostoj if employees had a choice as to whether to vote at all and Ostoj responded that there was no choice, either vote for or against the Union, but all must vote. According to Ostoj, she told Ha only that employees had an opportunity to vote yes or no and added that it was important to vote. I credit Ha again and reject Respondent's contention that there is a language barrier at work here. Ha came to the United States in 1970 from South Korea and for 4 years attended night classes in English at the local high school and at the community college. I am confident that she understood what Ostoj said and I further find still another violation of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl in an implied threat if employees failed to vote in the election.

Finally, it is alleged that Ostoj threatened Ha by telling her that employees who supported the Union could be fired. At a meeting on November 1, with all public area housekeeping employees present including Ostoj and another supervisor named Diaz, printed campaign literature on behalf of the Company was distributed (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 23)fiMDBUfl*ERR17*fiMDNMfl. When the meeting concluded, Ostoj said union supporters could be fired ''just like that!'' (fiMDBUfl*ERR17*fiMDNMflsnapping fingers)fiMDBUfl*ERR17*fiMDNMfl.

In her testimony, Ostoj admitted distributing procompany campaign material to her employees on worktime (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 23)fiMDBUfl*ERR17*fiMDNMfl. Ostoj denied making the threat or snapping her fingers. I credit Ha again and reject Respondent's claim that the statement is too vague to constitute a violation. Rather, I find that the 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl violation h

e. *Paragraphs 6(fiMDBUfl*ERR17*fiMDNMfle)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMD*

These allegations involve two alleged threats by Wright toward Velasco: First, in October, about 2 weeks before the election, about 8:15 a.m., Velasco an open union supporter, had been passing out union literature in the women's locker room, when Wright told her to be careful, and not to distribute the material outside the locker room, because if Velasco was seen by somebody, she was going to be in a lot of trouble. When Velasco protested that she had a right to distribute the material in the locker room or in the cafeteria, Wright repeated, ''[B]e careful,'' that Wright did not want to see her doing this. According to Wright, she observed Velasco and two other employees distributing union literature to employees as they walked in and out of the locker room. Then Wright said this was acceptable, but that Velasco should not leave material lying around unattended. Wright denied saying the remainder of the remarks attributed to her.

Velasco's version of the conversation is corroborated by current employee Julia Alumari, a maid and employee on the property for 14 years. However, under either version of the conversation, Respondent has violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fi

Act. Velasco and her coworkers had a right when off duty, to distribute literature in all nonwork areas of the hotel, including the cafeteria and breakrooms. See *Sahara Tahoe Hotel*, 292 NLRB 812, 813 (fiMDBUfl*ERR17*fiMDNMfl1989)fiMDBUfl*ERR 269 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fiMDNMfl. So, Wr those rights to the locker room only and by keeping the employees under surveillance and threatening them with due consequences if caught. But even if I were to credit Wright's version, I have already found above that Respondent disparately enforced its no-solicitation and no-distribution policy. Accordingly, Wright's own comments indicate that only union literature was subject to the ban on unattended material in the locker room, breakroom, and cafeteria.

Velasco also testified to an October 26 conversation with Wright and Watts, with reference to defacing of procompany posters in the grey area. Velasco said she had not been responsible and did not then know who was responsible (fiMDBUfl*ERR17*fiMD time later, she learned the culprit's identity)fiMDBUfl*ERR17*fiMDNMfl. T threatened to hold Velasco responsible if the matter happened again. According to Wright, she received a report from certain unnamed employees that a group of housekeeping employees had defaced the posters. She obtained photos of female housekeeping employees and showed them to the employees who told Wright that Velasco and another employee may have been involved. Both Wright and Watts denied ERR17*fiMDNMfl testified that in the meeting Wright merely explained that anyone encouraging or assisting in defacement of posters would be in trouble. I credit the supervisors' testimony that Wright never threatened to hold Velasco responsible for future defacement nor that Wright said Velasco could be fired without warning. Based on these credibility findings, I will recommend this allegation be dismissed.

f. *Paragraphs 6(fiMDBUfl*ERR17*fiMDNMflf)fiMDBUfl*ERR17*fi*

The question presented is whether Santo fired Skaug to encourage employees to vote against the Union.

When Respondent took over the property, Skaug was assistant executive housekeeper. In the first few months, Respondent's manager received employee complaints about her performance. Santo responded to these complaints—long be- NMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl fore any union activity—counseled Skaug and advised her to be more professional in her management style and to attend management training (fiMDBUfl*ERR17*fiMDNMflG.C. Exhs. 13(fiMDBUfl spring, there was a vacancy for executive housekeeper. Santo attempted to hire someone who was unavailable. Then he consulted with a former official of Bally's who gave a good recommendation for Skaug. Santo then promoted Skaug to executive housekeeper at a pay raise of about $8000 per year. There followed more employee complaints at a time when the union campaign was in progress. In addition, Wright reported to Santo that Skaug maintained certain presigned forms on her desk, called payroll authorization forms (fiMDBUfl*ERR17*fiMDNMflPAFs)fiMDBUfl*ERR17*fiMDNMfl. This employees could acquire these forms and without authorization, assign themselves a pay raise. Wright also found Skaug to be rude and abrupt with employees. The Burke Group management consultants also found Skaug to be deficient. At one point, Santo attempted to allow Skaug several weeks off the job to see if this would help her ''get her act together.'' It did not. Finally, it was discovered that Skaug's performance in PEP and in evaluating employees was not up to standard.

As I noted before, Skaug never testified. Santo candidly testified that employee complaints did play a role in Skaug's termination in the summer (fiMDBUfl*ERR17*fiMDNMflTr. 160). Based on all the evidence, however, I find that Skaug would have been terminated anyway, even absent the union campaign. I credit the testimony of Santo and Wright on this point and I will recommend that the allegation be dismissed.

g. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflf)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl2)fiMDBUfl*ERR17*fi*

It is alleged here that on October 21, Santo interrogated an employee regarding his union sympathies. In support of this allegation, the General Counsel called current employee, Antonio Valtierra, now working as a porter and an employee on the property for 11 years. According to Valtierra, he was present about 8:10 a.m. on the day in question at a meeting of housekeeping employees. Also present were Wong and Watts. In the course of this meeting, Santo asked the group in English, what is your important vote. Then Santo answered his own question, by saying your vote should be no.

Valtierra testified through an interpreter, though he had some limited comprehension of English. I find that Santo's remarks are protected by Section 8(fiMDBUfl*ERR17*fiMDNMfl[illegible]fiMDBUfl*ERR17*fiMDNMfl of the Act. I find no coercion here as the question was rhetorical and not calculated to elicit information from nor coerce the employees. Accordingly, I will recommend that this allegation be dismissed.

Santo is also accused of creating the impression of surveillance on October 27, when he told employees that the hotel knew which employees were union supporters. The alleged statement occurred in another meeting of 25–30 housekeeping employees held about 10:30 a.m. with Santo, Watts, and Supervisor Mark Hanson in attendance. According to current employee Vevia Ablang, a utility porter and employee on the property for 14 years, Santo told the assembled employees that the other departments were saying that housekeeping is the only department that still wanted the Union so they needed to be talked to. Santo added that they only wanted the Union for revenge and that he knew everyone who was a union supporter (fiMDBUfl*ERR17*fiMDNMflTr. 561). fiMDBUfl*ERR17*fiMDNMfl. As argued by Respondent, Santo, Watts, and Hanson all testified that they recalled the meeting in question, because the subjects of vandalized cars had also been brought up, and that Santo did not make the remarks attributed to him. In this case, I credit Respondent's witnesses and I will recommend that this allegation be dismissed.[15]

h. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflg)fiMDBUfl*ERR17*fiMDNMfl*

Valtierra testified that in the October 21 meeting, Wong told the employees in English that the Union only wanted money from employees and employees could negotiate directly with the Company without having the Union. As noted above, Wong was acting as agent of Respondent when he addressed employees. Wong denied the remarks attributed to him by Valtierra, but Watts' testimony where she could not recall such a statement being made appears to refer to a different meeting as she was referring to a Gonzales meeting, not Wong's, and she could not recall that she ever said the Company was ready to negotiate directly with employees (fiMDBUfl*ERR17*fiMDNMflTr. 2918–2919). fiMDBUfl*ERR17*fiMDNMfl. Valtierra and in agreement with the General Counsel, find that by soliciting grievances with an implied promise to remedy, Wong violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17

i. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflh)fiMDBUfl*E*

It is alleged here that Gonzales, who I find to be an agent of Respondent, committed certain unlawful acts, beginning in August, when he allegedly solicited grievances from employees. I have covered the allegation in paragraph 6(fiMDBUfl*ERR17*fiMDNMf 32–CA–13390 above.

The General Counsel also directs my attention to an October 19 meeting of housekeeping employees in which Gonzales spoke to employees. Valtierra places the meeting on October 25 and quotes Gonzales as saying because the Company would always be ready to negotiate directly with employees, there is no need to negotiate through the Union. Then he asked employees how they intended to vote. To this Valtierra testified [illegible] of the vote was secret. The entire meeting was conducted in Spanish. On cross-examination, the witness admitted that Gonzales said if the Union came in, the Company would negotiate with it.

I will recommend dismissal of this allegation. Although I credit Valtierra, I find some confusion in his testimony. For example, he quotes Gonzales as saying, what would be our important vote? But even if Gonzales asked employees how they intended to vote, in the context of Gonzales' 8(fiMDBUfl*ERR17*fiMDN tected statements regarding the advantages of keeping the Union out, I find no unlawful offer to deal directly with employees, and no threats to refuse to bargain in good faith. See *Pembrook Management*, 296 NLRB 1226, 1226–1227 (fiMDBUfl*ERR17*fiMDNMfl1989)fiMDBUfl*ERR17*fiMDNMfl.

j. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMfli)fiMDBUfl*E*

The issue here is whether Supervisor Bill Formico told employees, if they voted for the Union, they would be disloyal to the hotel. According to the General Counsel's witness and current employee, Leslie Schaffer, a food server in the buffet and employee on the property for 16 years, in an October meeting of food servers, Formico, the buffet manager and employee on the property for 7 years, told employees that voting for the Union would be voting against him and Mike Wootan (fiMDBUfl*ERR17*fiMDNMflassistant director of food and Formico admitted making the statement in question and I find that such personal appeals violate Section 8(fiMDBUfl*ERR17*fiMDNMf Act as it tends to discourage an employee from supporting the Union. *Yerger Trucking*, 307 NLRB 567, 570 (fiMDBUfl*ERR17*fiMDNMf

k. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflj)fiMDBUfl*E*

According to Julia Alumari, the General Counsel's witness, current employee (fiMDBUfl*ERR17*fiMDNMflmaid)fiMDBUfl*ERR17* for 14 years, on October 8, Supervisor Francisca Rodarte told her to remove a union button (fiMDBUfl*ERR17*fiMDNMflU. Exh. 31 clothing. Rodarte did not testify. For the reasons, previously stated, I find that Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfl Act as no ''special circumstances'' have been shown to justify restrictions on wearing of union buttons.

[15] In light of my credibility findings, it is unnecessary to determine whether the Board's test had been met for this violation: whether employees would reasonably assume from a statement that their union activities have been placed under surveillance. *South Shore Hospital*, 229 NLRB 363 (fiMDBUfl*ERR17*fiMDNMfl1977)fiMDBUfl*ERR17*fiMDNMfl.

*l. Paragraphs 6(fiMDBUfl*ERR17*fiMDNMflk)fiMDBUfl*ERR17*fiMD* [illegible]

In this series of allegations, the General Counsel alleges that Laundry Supervisors Bill Shad and Donna Martin violated the Act by making certain statements at a meeting of laundry employees in October. In support of the allegations, the General Counsel called Ramon Carballo, a current employee for 2 years, who testified through an interpreter. Carballo described a meeting of 12 laundry employees held about 2:15 p.m. on worktime in which Supervisor Bill Shad spoke in English to employees. Shad is the laundry production manager for 14 years and an employee on the property for 16 years.

Before turning to the specific violations, I note that Shad denied violating the Act. In assessing credibility, I note that Shad's testimony was so difficult to hear that I commented upon it for the record (fiMDBUfl*ERR17*fiMDNMflTr. 1364)fiMDBUfl*ERR17*fiMDNMfl. This trait coupled with the noisy atmosphere of the laundry room together with the inherent language problem (fiMDBUfl*ERR17*fiMDNMflShad does not speak Spanish)fiMDBUfl*ERR17*fiMDNMfl caused me initially to doubt the General Counsel's witness. In reconsideration, I credit Carballo because Shad is able to communicate adequately with his employees in English to tell them what to do, because Carballo is a current employee, and because Supervisor Donna Martin did not testify and I draw an adverse inference from her absence. Finally, I note that Shad's remarks to employees fit the pattern of supervisory conduct previously established.

Carballo testified that Shad said Respondent would give better wages if the Union did not come in, but if the Union came in, employees would lose benefits such as free lunch, parking, and even their jobs. To this, Carballo said he was not afraid as he could take the bus to work and bring his lunch. I credit Carballo's testimony and find these statements violate Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl of [illegible] ing, Shad distributed a ''Vote No'' button to employees including Carballo. For reasons previously stated, this distribution is a form of unlawful interrogation which violates the Act. (fiMDBUfl*ERR17*fiMDNMflShad testified that he gave buttons only to employees who requested them. Then Carballo was called back as a rebuttal witness for the General Counsel to deny that he had requested a button and I credit his rebuttal testimony.)fiMDBUfl*ERR17*fiMDNMfl The next day, Shad questioned Carballo as to why he was not wearing the vote no button and this also violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl of the Act.

*m. Paragraphs 6(fiMDBUfl*ERR17*fiMDNMfll)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl3)fiMDBUfl*ERR17*fiMDN* [illegible]

One of the allegations here is that in early October, Supervisor Wilma Bourdon directed Velasco to remove a prounion pin. Respondent concedes (fiMDBUfl*ERR17*fiMDNMflBr. 74)fiMDBUfl*ERR17*fiMDNMfl that this occurred. I find that in the absence of ''special circumstances,'' this action violates Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl of [illegible]

Bourdon is the assistant housekeeper for 2-1/2 years and an employee on the property for 13 years. She testified that in her meetings with employees she said everything was negotiable and denied saying that wage increases depended on whether the Union won or lost and further denied promising employees a wage increase if they did not support the Union. I credit Bourdon's testimony and will recommend dismissal of the remaining allegations which involve her alleged statements.

*n. Paragraph 6(fiMDBUfl*ERR17*fiMDNMflm)fiMDBUfl*ERR17*fi* [illegible]

In late October, about 1:15 p.m., Martin told Carballo to talk to two women on worktime about the Union. These women, named Rivera who works for Respondent as a receptionist and Ruiz, whose assignment in unknown, talked to Carballo in Spanish about the Union for about 20 minutes. Rivera asked Carballo what he thought about the Union and whose side he was on. She continued that the Union was of no benefit at all and would lead employees to strike where they could be replaced and lose their jobs.

I credit the testimony of Carballo and find that the two women were part of the platoon of employees who volunteered to campaign for Respondent on worktime in the non-English language of their coworkers. The test for agency is whether, under all the circumstances, an employee would reasonably believe that the alleged agent was reflecting company policy and speaking for management. *Southern Bag Corp.*, 315 NLRB 47 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17 [illegible] NLRB 489 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17*fiMDNMfl. [illegible] the employees to campaign for it during worktime, employees could reasonably believe Rivera and Ruiz were speaking for management and were Respondent's agents. This is particularly true for Carballo who was directed by his supervisor to speak to the women for as long as necessary (fiMDBUfl*ERR17*fiMDN [illegible]

Interrogation of employees is not unlawful per se. In determining whether or not an interrogation violates Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR [illegible] cumstances the interrogation reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Rossmore House*, 269 NLRB 269 (fiMDBUfl*ERR17*fiMD [illegible] *Sunnyvale Medical Clinic*, 277 NLRB 1217 (fiMDBUfl*ERR17*fiMDNMfl198 [illegible] sidering all surrounding circumstances, I find that Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDN [illegible]

*o. Paragraph 6(fiMDBUfl*ERR17*fiMDNMfln)fiMDBUfl*E* [illegible]

It is alleged that in October, Supervisor Jeff Coonce created the impression of surveillance and interrogated an employee about the union membership and sympathies of another employee. The General Counsel's witness and current employee, Fermin Ogaldez, lead man for convention services and employee on the property for 16 years, testified that in late October about 2:15 p.m., he had a conversation with Operations Manager Jeffy Coonce and another supervisor named Gary Christianson in the former's office. Coonce asked Ogaldez if he was a member of the Union and Ogaldez asked who told him that. Instead of answering, Coonce replied, ''[D]on't worry about it, you have the right to be in the Union if you want.'' Ogaldez's testimony is not disputed.

In agreement with the General Counsel, I find that Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17 [illegible] not an open union supporter and there was no proper purpose given for the interrogation. Coonce's final statement that Ogaldez had a right to be in the Union does not mitigate or repudiate Respondent's unlawful conduct.

*p. Paragraph 6(fiMDBUfl*ERR17*fiMDNMflo)fiMDBUfl*E* [illegible]

The question is whether Supervisor Mooney who asked Trevino, a subordinate, to sign for a piece of antiunion material, violated the Act. On October 11, about 3 p.m., Mooney gave Trevino an antiunion handbill and asked her to sign for

its receipt. Trevino said if she had to sign for it, she did not want it, a position which Mooney accepted. As the General Counsel recognizes (fiMDBUfl*ERR17*fiMDNMflBr. 46–47)fiMDBUfl*ERR17*fiMDNMfl, Respondent presented evidence that Mooney's practice of asking employees to sign for receipt of material which Mooney considered to be important long predated the union campaign (fiMDBUfl*ERR17*fiMDNMflR. Exh. 10)fiMDBUfl*ERR17*fiMDNMfl. At some point, Mooney discontinued the practice of asking employees to sign for campaign material and instead merely checked off the employee's name as the material was distributed (fiMDBUfl*ERR17*fiMDNMflG.C. Exhs. 32–38)fiMDBUfl*ERR17*fiMDNMfl. The General Counsel implies that this discontinuance was an admission that the prior practice was improper.

I reject the General Counsel's claim that requesting employees to sign for Respondent's campaign material is a form of unlawful interrogation. The practice was preexisting and referred to all material which Mooney considered to be important. Moreover, the purpose was to protect Mooney from any claim that an employee did not receive a particular item. Unlike receipt of an antiunion button, which is expected to be worn as an endorsement of the button's message, here the material could be discarded immediately, unread if desired. Finally, there is no evidence that prior to the date in question, employees had the option of reading the distributed material before signing for its receipt, so as to decide whether they wanted it. Instead, the practice was to sign first, read later, then discard if desired. I will recommend that this allegation be dismissed.

Mooney is also accused of interrogating an employee named Michelle Dooher on November 3. Dooher is a current employee who has worked on the property for 11 years. On the day in question, Dooher was delivering reports to Mooney in her office when Mooney asked her to sit down. Mooney said the union vote was the next day and asked Dooher how she intended to vote. When Dooher did not reply, Mooney asked the question again. This time, Dooher said she would vote for what she thought was best for her. Mooney then said to Dooher, remember you get your paycheck from the hotel and not from the Union. The conversation concluded with Mooney discussing the Hilton benefit allowing free hotel rooms, when available for Hilton employees, a benefit which could be lost if the Union came in. Mooney admitted speaking to Dooher on the day in question, but denied asking Dooher how she was going to vote. Instead Mooney claimed only to have discussed the negotiations process.

I credit Dooher on this point because of her current employee status and because Mooney has been found to have made questionable statements in her meetings with employees. I find that asking an employee who was not an open union supporter how she intends to vote in the union election violates Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl [illegible] NLRB 599 (fiMDBUfl*ERR17*fiMDNMfl1991)fiMDBUfl*ERR17*fiMDNMfl; and *Taylor Chair Co.*, 292 NLRB 658 [illegible] 2 (fiMDBUfl*ERR17*fiMDNMfl1989)fiMDBUfl*ERR17*fiMDNMfl.

Mooney is also accused of telling Shipman that employees could not talk about the Union on worktime. Shipman is a room reservations clerk who has worked on the property for 16 years. She testified as a union witness that on October 12, Mooney conducted a staff meeting which lasted about an hour. At the conclusion of routine announcements, Mooney asked employees if anyone had questions regarding the Union. Mooney added that employees should not discuss the Union on company time, only on breaks or on off time. To this Shipman said the meeting was being held on company time and Mooney should not be talking about the Union [illegible]

The work that Shipman does accepting room reservations has an ebb and flow to it. Evidence presented shows that employees can talk about nonwork related subjects so long as the conversation does not interfere with work. Accordingly, the disparate enforcement of a nontalking rule violates Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl* [illegible] 845 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl; and *Wi* [illegible] 1157 (fiMDBUfl*ERR17*fiMDNMfl1987)fiMDBUfl*ERR17*fiMDNMfl.

Shipman also described a meeting on October 20 where she was called into Mooney's office and asked by Mooney what she knew about the Union. When Shipman did not answer, Mooney said that if the Union came in, they could call a strike and that employees would not be paid during a strike. Since both Shipman and her husband worked for Respondent, Mooney asked Shipman if they could afford to pay their bills if they went out on strike (fiMDBUfl*ERR17*fiMDNMflShipman [illegible] works in the warehouse and receiving dock and was not eligible to vote in the election)fiMDBUfl*ERR17*fiMDNMfl. Mooney admitted th [illegible] tion in question, and that she discussed strikes with Shipman including asking about paying bills if both Shipman and her husband went on strike.

Mooney did not recall asking Shipman about the Union, but I credit Shipman's testimony and find that the question was coercive in violation of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUf [illegible] *berland Farms*, 307 NLRB 1479 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl [illegible]

q. *Paragraphs 6(fiMDBUfl*ERR17*fiMDNMflp)fiMDBUfl*ERR* [illegible]

Several allegations in this segment of the case involve Patricia Johnson, an employee for 5-1/2 years on the property. Johnson supervises 28 hourly employees and 6 salaried. In late October, about 4 p.m., Schenk was told by his supervisor to talk to Johnson on worktime. Just he and Johnson were present in her office. Johnson began by noting that Schenk had just been married; and Johnson commented on Schenk's likely plans to buy a home and have children. With that introduction, Johnson related her experience with unions in a prior job in Las Vegas, where the relationship between employees and management was not very good as it was necessary to go through the union steward to talk to an employee. Then, according to Schenk, Johnson said a new health insurance plan was coming in January, but that if the Union came in, employees would not get it. Johnson asked Schenk how he felt and he replied that he was not sure, that he was upset at both sides. Johnson probed further and asked what was bothering him. Schenk referred to the PEP program which had caused layoffs in the receiving department. Schenk also mentioned problems with the current insurance plan that was not working adequately. [illegible] Johnson answered that Hilton had made a lot of mistakes, but that he should tell everyone about the coming new insurance plan.

According to Johnson, she was directed to speak to Schenk, by her boss, Bob Neapolitan, Respondent's vice president for sales, who told her that Schenk seemed confused. Johnson admitted talking to Schenk about the new insurance plan coming in on January 1, and that it could change as it would be subject to negotiations if the Union won. Johnson denied asking Schenk how he felt or to tell fellow employees about the coming new insurance plan. She did

admit saying, however, that mistakes had been made. She had several similar conversations with subordinate employees on a one-on-one basis.

I credit Schenk's version of the conversation and find Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl that insurance benefits could be lost if the Union came in, interrogating Schenk about his union sympathies, and soliciting grievances with an implied promise to remedy them. See *Capital EMI Music*, 311 NLRB 997 fn. 4 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl. Except as found above, I will recommend dismissal of remaining allegations.

r. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflq)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fi*

The issue presented is whether Supervisor Micke conveyed to Taylor, an open union supporter, that selecting the Union would be futile. Taylor, a current employee, testified that 2 weeks before the election, about 10 a.m., Micke said to him in the rack room, ''You people are stupid, you don't need a union in here do you want to pay for meals or parking?'' This is what could happen if you go into negotiations. Taylor said negotiations start with what employees have, and work from there. Micke responded that Santo had told her and other managers that Respondent would not give in to any union demands during negotiations just to show employees and the city how stupid unions are. She added that Santo would also force employees out on strike so they would lose their jobs. Micke does not ''recall'' telling Taylor any of the matters attributed to her, nor could she ''recall'' Santo saying that employees would be forced out on strike.

I credit Taylor's testimony and find that Micke's statement tended to coerce employees as it indicated the Employer would not bargain in good faith with the Union. *Pioneer Concrete Co*., 282 NLRB 749, 753 (fiMDBUfl*ERR17*fiMDNMfl1987)fiMDBUfl*ERR17*fiMDNMfl.

s. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflr)fiMDBUfl*ERR17*fiMDNMfl*

It is alleged that on November 2, Supervisor Pok Tong Bothem required certain housekeeping employees to wear antiunion T-shirts. In support of this allegation, the General Counsel's witness Manuel Singh Nunez a current employee assigned as a houseman in the housekeeping department and employed on the property for 2-1/2 years, testified through an interpreter that on November 2, about 10 p.m., his supervisor, ''Pokie,'' told six housekeeping employees to put on and wear antiunion ''Vote No'' T-shirts (fiMDBUfl*ERR17*fiMDNMfl(U. Exh. 23)fiMDBUfl*ERR17*fiMDNMfl. Nunez complied, but later in his shift he got hot so he removed the T-shirt. Bothem directed him to put it back on.

Called as Respondent's witness, Bothem (fiMDBUfl*ERR17*fiMDNMfla/k/a Pokie)fiMDBUfl*ERR17*fiMDNMfl is the assistant housekeeper and employee on the property since 1979. Born and raised in Korea, she came to this country at the age of 21. She testified that she picked up T-shirts in the cafeteria a few days before the election, making sure she had different sizes and different languages, like Spanish, Chinese, and Philippine. Then she merely made them available to any employee who wanted one. She denied ordering anyone to wear a T-shirt or telling anyone who took it off to put it back on.

I credit Nunez as a current employee and find that the mandatory wearing of antiunion T-shirts violates Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl of the Act in that a preference for the Employer as a form of interrogation. *Latts Electric Co*., 293 NLRB 297, 303–304 (fiMDBUfl*ERR17*fiMDNMfl1 891 F.2d 281 (fiMDBUfl*ERR17*fiMDNMfl3d Cir. 1989)fiMDBUfl*ERR17*fiM

*Paragraph 6(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiM*

The complaint alleges that in October, Taylor had a conversation with Telecommunications Manager Linda Hutchinson while the former was on his way to lunch. Putting her arm around Taylor, Hutchinson said, ''Congratulations, your name had just been moved to the top of the list.'' Taylor asked, ''[W]hat list?'' and Hutchinson responded, ''[T]he list of employees who are participating in the Union.'' She went on to explain that fellow employees gave lists of names to manager and department heads regarding those employees who are participating in union activity. She concluded by admonishing Taylor to be careful who he spoke to. There are not a lot of friends out there, she added.

First, I credit Taylor whose testimony was not disputed. Next, I find that Taylor was an open and active union supporter at this time. Finally, I find Hutchinson's statements violated the Act because she was sending a message that his activities were under surveillance by a network of company spies and agents.

Hutchinson is also accused of unlawful interrogation and unlawful polling of employees about their union sympathies. The testimony in support of this allegation is supplied by the General Counsel's witness and current employee Sydney Conser, an employee on the property since 1979. Again, the testimony of this witness is not disputed. On October 21, Hutchinson asked Conser if Hutchinson could take her to lunch. At lunch, Hutchinson said she was aware that Conser's supervisor, Mooney, and Conser had a communication problem, so Hutchinson asked in place of Mooney, how Conser was going to vote. Conser explained that it was a secret ballot, so she was not going to say. Hutchinson explained to Conser that she had asked all employees in the department how they intended to vote, and all but one said they would vote ''No.'' After lunch was over, Hutchinson paid for both.

I credit Conser and find that the request as to how she intended to vote violates Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*E the polling of other employees on the same subject similarly violates the Act. That Conser and Hutchinson may have been having a friendly casual conversation is of no relevance to the violation in the context of this case. See *Foamex*, 315 NLRB 858 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17*fiMDNMfl. Hutchinson made it clear to Conser that the former was acting as Mooney's surrogate and agent.

u. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflt)fiMDBUfl*E*

Taylor also testified regarding an alleged unlawful interrogation by Sandy Warbington, room reservations assistant manager, Respondent's witness and employee on the property for 16 years. According to Taylor, in early October, Warbington asked him what he thought of this union business. Taylor responded that it was none of her business to question him about it because Warbington was a manager. Warbington reported that Taylor should be careful of the laws of the Act in that carefully before he accuses people of things. Warbington described Taylor as an old friend, but denies asking him the question reported by Taylor. Instead, Warbington admits a

[16] The General Counsel's motion at p. 54, fn. 55 of the brief to dismiss sec. 6(fiMDBUfl*ERR17*fiMDNMflq)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl2)fiMDBUfl*ERR17*fiMDNMfl is granted.

union-related conversation, which she initiated in the business coordinator's office, to the effect Warbington said to Taylor, ''I know you are for the Union, but let's exchange points of view.''

Again, I credit Taylor's account of the conversation, reiterate that Taylor was an open and active union supporter, but find that Warbington violated the Act by attempting to probe the depth of Taylor's commitment to the Union and ascertain whether he could be turned around.

Warbington is also accused of having an unlawful conversation with Trevino on October 12. While Trevino was working the phones accepting reservations for rooms, Warbington approached her and directed her to put her calls on hold. Warbington then told Trevino that she understood how Trevino felt regarding the Union and she wanted to talk to Trevino about this. More specifically, she asked how Trevino could support the Union as the Union could not accomplish anything and Trevino was influencing others. Warbington added that negotiations would start at zero and it could take up to 6 years to get a contract, because the Employer did not have to agree to anything. Moreover, if the Union went on strike, people would lose jobs.

Warbington admitted talking to Trevino about 6 p.m. on the day in question, but said to Trevino only that she wanted to exchange points of view. Warbington's opinion was that negotiations can end up with more or less or the same. Warbington added that in her opinion, the Union could not help employees.

I credit Trevino's account and note that both witnesses agree that during the conversation, Trevino found it necessary to bring out an official NLRB publication explaining the Act (fiMDBUfl*ERR17*fiMDNMflR. Exh. 5)fiMDBUfl*ERR17*fiMDNMfl and point to the page which explains that an employer cannot make threats about loss of benefits to defeat the Union. Under Warbington's serene version of the conversation, it would hardly have been necessary for Trevino to do that. I also rely on the pattern of Warbington's initiatives as established by other witnesses. I also agree with the General Counsel's argument (fiMDBUfl*ERR17*fiMDNMflBr. 5)fiMDBUfl*ERR17*fiMDNMfl, that a fair reading of Trevino's account indicates that Warbington's message was that it would be futile to be for the Union and this violates Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl of the

Finally, Warbington is accused of threatening an employee, Trevino, with loss of insurance benefits if employees voted for the Union. In this case, Trevino was a witness on October 22, about 2 p.m., to a conversation between Warbington and an employee named Lisa Osgood who did not testify. In a hallway leading to room reservations, Osgood asked Warbington what effect a union victory would have on insurance premium reductions. According to Trevino, Warbington responded that the premiums would be frozen. This alleged conversation took place in the context of a memo from Hughes to employees, dated October 19, but distributed by Mooney to Trevino and other employees on October 22. In part, the memo reads:

> There is also good news for those of you in the Hilton PPO Plan. Blue Cross/Blue Shield has done a very good job of maintaining operational costs and providing more efficient claims administration since July. As a result, *effective January 1, the rates you're currently paying for coverage will be lowered*. This is proof that by working together we can hold the line on health care costs. [Emphasis in original; G.C. Exh. 24.]

A second Hughes' memo to employees, this one dated October 22, in part, reiterated the message:

> YOU ALREADY HAVE BEEN INFORMED THAT AS OF JANUARY 1, 1994 THE RENO HILTON HAS ADDED A NEW HMO AND SIGNIFICANTLY LOWERED YOUR CONTRIBUTION TO HEALTH INSURANCE. [G.C. Exh. 22.]

In her testimony, Warbington admitted speaking to Osgood on the day and time in question, after the latter initiated the conversation to say she liked the new (fiMDBUfl*ERR17*fiMDNMflmedical)fi tion. Then Warbington said, ''[I]f the Union came in, this benefit, like all benefits, could increase, decrease or stay the same.''

In analyzing this segment, I note that Osgood's absence as a witness was not explained and therefore an adverse inference should be drawn and weighed against the General Counsel. Notwithstanding this factor, I cannot ignore additional surrounding circumstances including the two memos referred to above and other allegations against Warbington. When all is said and done, I credit Trevino on this allegation. I have considered the case of *Mantrose Haeuser Co.*, 306 NLRB 377 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fiMDNMfl, passage out of a 19-page document distributed to employees was challenged. No other allegations of unfair labor practices or objectionable conduct were brought against Respondent. Clearly the case has no application here. Instead, I find that Warbington's statement threatened a loss of benefits, if the Union came in, i.e., current insurance premiums would be frozen and no reduction would occur. This violates Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR 156, 160 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl.

v. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflu)fiMDBUfl*E*

The General Counsel alleges here that a supervisor in housekeeping named Florentino Diaz violated the Act in certain particulars. In support of this allegation, the General Counsel called current employee Sooki Ha, an employee in public area housekeeping and employee on the property since 1981. In October, while Ha was working on the graveyard shift cleaning the casino area, Diaz asked Ha how she intended to vote. To this, she said her vote was supposed to be a secret. Shortly after this, Ha wore a prounion button to work for the first time, but when Diaz told her to take it off, she complied. Finally on November 1, Diaz placed a bumper sticker, which said, ''Vote No'' on Ha's back. Ha complained that the sticker pinched her hair.

Diaz never testified, so I credit all of Ha's testimony as undisputed. I also find that the these allegations against Diaz are sustained, based on Board citations previously made.

w. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflv)fiMDBUfl*E*

The issue in this segment concerns restrictions on employees' rights to talk about the Union. According to General Counsel's witness and current employee Martha Bogard, employed on the property for 6 years as a ticket agent clerk, about 2 weeks before the election, she was preparing to start work, shortly before noon, when she asked another em-

ployee, ''[D]id you see the article about the union in the paper today?'' Then Tara Hertsoch, at the time in question assistant manager of ticket promotions, and employee on the property for 3-1/2 years, said that employees were not permitted to discuss the Union in the office per instructions to Hertsoch. Hertsoch then threatened to write up Bogard for the next offense.

Called as a Respondent witness, Hertsoch admitted the conversation with Bogard, but said she intervened only when it was time to go to work and Bogard continued to discuss the newspaper story. Hertsoch also testified that she told Bogard that employees could talk about any subject in the cafeteria or breakroom, but there was to be no talking during worktime. On cross-examination, Hertsoch testified it was customary and permissible for employees to talk about nonwork related subjects, when they were not busy.

I credit Bogard's account of the conversation and find that she was orally reprimanded in a work area, before her shift had even began. But even if the shift had begun, Hertsoch's statements about Respondent's no-solicitation rules, were overbroad and indicated disparate enforcement to the prejudice of the Union and those employees who desired to discuss union-related subjects. Accordingly, I find that Respondent has violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17 *Elevator Corp*., 295 NLRB 347 (fiMDBUfl*ERR17*fiMDNMfl1989)fiMDBUfl*ERR17*fiMDNMfl, and *Valley Special Needs, Program*, 314 NLRB 903, 913 fn. 1 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17*fiMDNMfl.

x. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflw)fiMDBUfl*ERR17*fiMDNMfl*

Bogard also presented testimony regarding a mid-October meeting with Brooke Dunn, Respondent's vice president for entertainment and marketing. Another supervisor in attendance was Beverly Borda, ticket and promotions manager, employed on the property for 3 years. Also in attendance were Wright from human resources and about eight employees from Respondent's ticket department. The employees were told by Dunn that the buffet was about to close for about 3 months for remodeling. The buffet operations would be relocated into the showroom where entertainment was usually held, eliminating the need temporarily for ticket agents and telephone reservations clerks. Dunn began his remarks by stating that some layoffs were likely, but this could be minimized by voluntary leave without pay, by vacations or by transfers to other departments. Dunn added that if layoffs did occur, employees would be recalled by seniority at the same rate of pay and with the same job description. Both Dunn and Burda asked what assurances would be acceptable to minimize the impact of the layoffs on employees.

About a week after the meeting, Hughes wrote a letter to Bogard which reads as follows:

> October 22, 1993
> Ms. Martha ''Angie'' Bogard
> Ticket/Promotion Agent
> Reno Hilton
>
> Dear Angie,
>
> I understand that Brooke Dunn, Vice President—Marketing and Lynn Wright, Director of Human Resources had an opportunity to meet with you last Friday, October 15th. At that department meeting they explained our plans with respect to temporarily housing the Buffet in the Hilton Showroom while we undergo renovations. Of course, this will have some affect on the Ticket/ Promotions Department employees. All this week we have worked very hard to plan a way that this can be done with the least amount of disruption to our employees.
>
> Several of your co-workers have offered to make special arrangements, either by volunteering to take time off, pursuing an internship with the Reno Hilton, or planning for the arrival of newborns. In addition, there was a general consensus from the Ticket/Promotion team that we could modify the work schedule to 4 days of work during those weeks where we have not already committed to shows. Of course, those weeks when shows have been scheduled, there may be additional work days available to you.
>
> On a personal note, I'd like to thank you for your contribution to this team endeavor. With everyone's cooperation to the special arrangements on a temporary basis, we will be able to offer employment to everyone in your department during the renovation.
>
> You have my personal guarantee that once our Buffet Renovation is complete, your hours of employment will return to their normal schedule and at your existing Date of Pay.
>
> Thanks again for your dedication and support. By working together we can look forward to an exciting and prosperous facility, making us the best hotel/casino in Northern Nevada.
>
> Best regards,
> /s/ Ron Hughes
> Ron Hughes
> President
> [U. Exh. 3.]

I find that Respondent has violated Section 8(fiMDBUfl*ERR17*fiMDNMfl leged. In *Foamex*, supra, the Board found a violation where a supervisor asked employees meeting together about their problems and asked for suggestions of possible management solutions. There as here, the statements constituted grievance solicitations with an implied promise to resolve them.

y. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflx)fiMDBUfl*E*

In this segment of the case, certain statements and action of Hughes are challenged. According to current employee Vevia Ablang, Hughes met with about 30 housekeeping employees about 3 p.m., on October 29. During the course of his remarks, Hughes told them that if the Union came in, wages would be or could be frozen—(fiMDBUfl*ERR17*fiMDNMflAblang was how Hughes put it)fiMDBUfl*ERR17*fiMDNMfl—and negotiations would scratch, possibly taking up to a year. Hughes added that everything is negotiable.

I have examined the case of *Teksid Aluminum Foundry*, 311 NLRB 711, 717 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fi and the case of *So-Lo Food*, 303 NLRB 749 (fiMDBUfl*ERR17*fiMDNMfl1 by Respondent. In my opinion, the facts of the latter case are closer to the facts of the instant case. Because the General Counsel has not proven that Hughes said wages would be frozen, I find that the following ''bargaining from scratch'' comment was merely a lawful statement that benefits could be lost through the bargaining process. *So-Lo Foods*., supra

at 750. The Board in that case ordered the allegation dismissed as I will recommend here.[17]

It is also alleged that the in late October, Hughes went up to the 21st floor where he addressed Velasco and about five other housekeeping employees, all or most of whom were wearing prounion buttons. He asked them why they wanted the Union. To this, one maid mentioned an insurance problem and another, the way rooms were assigned, resulting in more work for her. Hughes stated he needed time to solve all the problems. The meeting occurred in the maids' breakroom, which was also the linen closet for that floor and lasted between 10 to 15 minutes. Hughes spoke to the employees in English and it was Velasco who did the interpreting for the most part. Although Hughes denied asking the employees why they wanted the Union, I credit Velasco on this point. I will also find that Hughes was soliciting grievances with an implied promise to remedy them and thereby violated the Act.

Finally, Hughes is accused of making a series of speeches to groups of employees on November 2. In these speeches, which Hughes read to employees from a prepared text, he made certain statements which the General Counsel contends violate the Act. To establish what Hughes said, I turn to the record which contains not only the English version, but the Spanish translation as well of his remarks (fiMDBUfl*ERR17*fiMDNMflC. C. Exhs. 12(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl. At page 5 of the English portion, Hughes' speech as follows:

> Hilton has given you all an opportunity to demonstrate your commitment and value. I'm asking you now to give Hilton a chance to show its commitment to you. Vote No. . . . Remember in a year from now you can bring this Union, or any other Union, in here. But right now, give Hilton and, give me a chance, and I'll deliver.

I reject the General Counsel's argument and find that Hughes' remarks were protected by Section 8(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*ERR17*fiMDNMfl of the Act. See *Hyatt Hotel Corp*., supra at 259 fn. 2, 269–270. Elsewhere in this decision, I have recommended dismissal of certain actions taken by Respondent during the critical period of the election campaign. As I noted there and restate here, Respondent has to have latitude to run its business which had been purchased while in Bankruptcy. By giving the Respondent's business decisions the benefit of the doubt, where the General Counsel's evidence was meager, I do not condone the host of other unfair labor practices found in this case. Hughes had been president since November 1992, so he was not exactly a new executive. As the record shows, however, much of his tenure for the proceeding year consisted of undoing the mistakes of his predecessor and holdover Bally managers. Clearly in many cases, Hughes and other Respondent officials went too far. In this case, however, I find that Hughes stayed within the protective confines of Section 8(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*ERR17*fiMDNMfl of the Act. See 925–926 (fiMDBUfl*ERR17*fiMDNMfl1984)fiMDBUfl*ERR17*fiMDNMfl.

z. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMfly)fiMDBUfl*E*

On November 3, Bogard had lunch with two coworkers in the employee cafeteria. On their way back to work, Bogard picked up a free T-shirt marked ''Vote No'' from a person distributing them. Moments later, she received a ''Vote Union'' button from someone else. Then Bogard encountered her supervisor, Borda, who upon seeing the ''Vote No'' T-shirt in Bogard's possession said, ''I want to shake your hand.'' As Borda extended her hand, Bogard extended hers, exhibiting the ''Vote Union'' button and said, ''Oh, for this.'' Then Borda pulled her arm back, and said, ''I can't do it for that.'' Later that afternoon, Borda said first to the other two women who were at lunch with Bogard, but not involved in the incident described above, and then said to Bogard, ''[E]ither Brooke wants to know if you want to see him, or Brooke would like to see you.'' Then Bogard asked, ''[W]hat does he want to see me about.'' And Borda kind of laughed and said, well, ''Big Brother is always watching, you never know where.'' Bogard never went to see him because she had nothing to say.

Borda is more definite in her testimony, to the effect that Dunn instructed her that if anybody had not talked to him yet and if they would like to talk to him, to send them up together (fiMDBUfl*ERR17*fiMDNMflTr. 1285)fiMDBUfl*ERR17*fiMDNMfl ployees who had not yet met with Dunn, including Bogard. Although Borda denied making the big brother remark in question, I credit Bogard. With the clarification of Borda's remarks, the ''Big Brother'' remark assumes much less significance. In fact, I find it has so little significance, I will recommend dismissal. It is not clear what union activities of Bogard's may have reasonably been perceived as being under surveillance. If it was the prounion button Bogard had a T-shirt from the Company at the same time. Moreover, since all employees in Borda's group were being invited to see Dunn, if they desired, no reasonable inference could be drawn save that Borda was joking.

aa. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflz)fiMDBUfl*E*

It is alleged here that Supervisor Duc Nguyen unlawfully interrogated employees and made certain other coercive statements. In support of this allegation, the General Counsel called current employee and utility porter, Vevia Ablang, an employee on the property for 14 years. According to Ablang, on October 29, her immediate supervisor, Duc Nguyen, asked her, ''[W]hat I was going to vote and I said I was going to vote yes.'' Then Nguyen added that employees owe their loyalty to Hilton, because ''we get our paychecks from them.'' To this, Ablang said, ''[W]hen they first came in they didn't treat us good.'' The supervisor said employees still owe our loyalty to them. Then Nguyen ''asked me what I was going to vote'' and I just said, ''I don't know,'' you know, so he would leave me alone (fiMDBUfl*ERR17*fiMDNMflTr. 562)fiMD

According to Nguyen, supervisor of the shampoo crew, Respondent's witness, and an employee on the property for 14 years, he denied ever asking an employee how he was going to vote, because that is supposed to be secret. He re-

[17] In *So-Lo Foods*, supra, the Board's order dismissing the allegation in question was made, ''notwithstanding the commission of numerous unfair labor practices by the Respondent.'' So too here, have I found numerous unfair labor practices—with more to come, no doubt. I have referred to this context of unfair labor practices, when it seems appropriate to give meaning to a certain allegation; on the other hand, I have been unwilling to use unfair labor practice context in the wholesale manner urged by the General Counsel, to find violations where the evidence is lacking, but where it is urged the context allegedly will provide the missing ingredient of proof.

calls talking to Ablang about a week before the election when she asked him for his opinion about the election. Nguyen answered that we have good jobs and nobody bothers us, so I do not think we need the Union because we waste $25 (fiMDBUfl*ERR17*fiMDNMflunion dues)fiMDBUfl*ERR17*fiMDNMfl. Ablang testified that he came to the United States in 1979 and worked himself up through the ranks.

I credit Ablang over Nguyen, finding that as a current employee, she is entitled to enhanced credibility. I also find asking how Ablang was going to vote and telling Ablang that a vote for the Union was an expression of disloyalty to Respondent who gave them both good jobs violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl of the Act.

bb. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflaa)fiMDBUfl*ERR17*fiMDNMfl*

In this allegation, the General Counsel alleges that on October 21, 1993, hotel security officers prohibited employees from distributing union literature near the employee entrance to the hotel and threatened those employees with arrest. In support of this allegation the General Counsel called Velasco and union attorney, Tim Sears.[18]

The facts are essentially undisputed. About 5 a.m. on the day in question, three off-duty employees of Respondent, Velasco, Alicia Macias, and Maria Alvarez, were distributing union literature to employees as they were reporting to work. The three women were on the sidewalk as they distributed literature (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 29)fiMDBUfl*ERR17*fiMDNMfl, about 25–30 feet from the employee entrance. After about 15–20 minutes, Wright came out and inquired what the woman were doing. Shortly after this, Dave Bennett, Respondent's director of security, and security guards showed up and requested the women leave the area. Someone summoned Sears from a nearby area, and he came to the employee entrance where he attempted to persuade Bennett that the employees had a protected right to distribute union literature at the time. After Bennett rejected Sears' arguments and again directed the women to discontinue their activities upon threat of arrest, the women and Sears left the area. Respondent contends in its brief, pages 100–101, that Respondent was simply enforcing its ''longstanding rule precluding solicitation and distribution outside the employee entrance.'' In fact, Respondent introduced evidence which I credit, that a procompany employee named Linda Jolly attempted to distribute literature outside the employee entrance in October. Wright told her that it was permissible to distribute literature in the lockerroom or cafeteria, but not outside the employee entrance.

The first issue for discussion is whether such a rule prohibiting off-duty employees from distributing union material outside the employee entrance, actually exists. I doubt it. Santo testified that the area outside the employee entrance had a canopy for protection from the weather. In addition, benches were nearby where employees could wait for the bus or pickups. Employee parking lots are close by and guests are discouraged from using the employee entrance, while employees are discouraged from using the guest entrance in the front of the hotel. As noted above, Respondent's employee handbook (fiMDBUfl*ERR17*fiMDNMflU. Exh. 4)fiMDBUfl*ERR17*fiMDNM and Distribution Policy for Employees and Non-Employees.'' In pertinent part, the policy reads:

> No employee may distribute literature in the work areas at any time or solicit another employee in any area of the Hotel during his or her work[ing] time or during the other employee's working time. No employee may solicit other employees at any time in gaming, meeting, convention, exhibit, or recreational areas open to guests and/or the public.

Clearly no mention is made of off-duty employees distributing material outside the hotel on what may even have been public property. Moreover, there is no notice near the employee entrance informing employees of the rule (fiMDBUfl*ERR17*fiMDNM In fact, I am not aware of any written statement of the alleged rule anywhere in the record, nor any official promulgation of the rule to employees, other than on an ad hoc basis as Respondent or its agents choose to enforce the alleged rule during the election campaign.

In any event, whether the rule exists or not is not the primary issue here. Even assuming its official existence, the rule unlawful. As found in the Board-approved decision of *Scamp Auto Rental 1*, 314 NLRB 1089, 1093–1094 (fiMDBUfl*ERR17*fiMD

> In *Nashville Plastics*, 313 NLRB 462 (fiMDBUfl*ERR17*fiMDNMf Board held that an employer violated Section 8(fiMDBUfl*ERR17*fiMDN the Act by prohibiting off-duty employees from engaging in union solicitation and distribution of union literature on company property during nonworktime in nonwork areas. The Board stated:
>
> > Furthermore, an off-duty employee seeking access to his employer's property to distribute union handbills, unlike a non employee union organizer, falls within the scope of Supreme Court decisions protecting workplace organizing activities. Thus in *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 491 (fiMDBUfl*ERR17*fiMD the Court stated that ''the right of employees to self-organize and bargain collectively established by Section 7 . . . necessarily encompasses the right effectively to communicate with one another regarding self-organization at the jobsite.'' And in *Eastex, Inc. v. NLRB*, 437 U.S. 556, 574 (fiMDBUfl*ERR17*fiMDNMfl1978)fi upheld the Board's view that the workplace ''is a particularly appropriate place for the distribution of Section 7 material, because it 'is the one place where [employees] clearly share common interests and where they traditionally seek to persuade fellow workers in matters affecting their union organizational life.''' [Quoting *Gale Products*, 142 NLRB 1246, 1249 (fiMDBUfl*ERR17*fiMDNMfl1963)fiMDBUfl*ERR17*fiM
>
> In sum, if analogies are to be drawn, we find that the off-duty employees in this case who sought access to the Respondent's premises for organizational purposes on days when they were not scheduled to work most closely resemble the employees in the *LeTourneau* [illegible] whose right to distribute union literature on the *Fargo Armored Services Corp.*, 290 NLRB 872, 873 fn. 3 (fiMDBUfl*ERR17*fiMDNMfl1988)fiMDBUfl*ERR17*fiMDNMfl.

[18] The Board has said repeatedly that it is not part of its function or responsibility to pass on the ethical propriety of a decision by trial counsel to testify in an NLRB hearing. Where such testimony is otherwise proper and competent, it should be admitted into evidence. *Page Litho, Inc.*, 311 NLRB 881 fn. 1 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl, and *Wills*

> outside areas of the employer's premises on their own time was upheld by the Supreme Court.[4]

[4] *NLRB v. LeTourneau Co. of Georgia*, 324 U.S. 793 (fiMDBUfl*ERR17*fiMDNMfl1945)fiMDBUfl*ERR17*fiMDNMfl.

See also *St. Luke's Hospital*, 300 NLRB 836 (fiMDBUfl*ERR17*fiMDNMfl1990)fiMDBUfl*ERR17*fiMDNMfl, where the Board reversed the administrative law judge's dismissal of an allegation involving restrictions on distribution of union literature in the employer's parking lot. The Board stated, supra at 837:

> Except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates and other outside non-working areas will be found invalid.

No credible business reasons have been called to my attention to justify the alleged rule. In light of the facts stated above, I find Respondent violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl as alleged. *NCR Corp.*, 313 NLRB 574, 576 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl.[19]

cc. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflbb)fiMDBUfl*ERR17*fiMDNMfl*

It is alleged here that Respondent violated the Act on November 4, when it formed a gauntlet through which employees had to pass in order to vote, and videotaped employees as they entered to vote.

Once again, the facts regarding this issue are essentially undisputed.[20] On the morning of November 4, which was election day, a group of persons affiliated with the Communications Workers of America (fiMDBUfl*ERR17*fiMDNMflCWA)fiMDBUfl*ERR17*fiMDNMfl, who were holding some sort of meeting in the hotel, learned of the election and decided to hold a union rally in solidarity with the Carpenters Union representatives who also participated. Participants totaled about 35 in number. This lasted for about 45 minutes with signs, hats, and T-shirts to the effect ''Union, Vote Yes'' and consisted primarily of milling about and talking to each other.

Wright testified that she learned of the rally and decided to organize her own ''Team Hilton, Vote No'' rally for the afternoon. The Employer's rally occurred in the same place the earlier rally had occurred which was directly outside the employee entrance, a location where Respondent claimed immediately above in this decision that no-solicitation/no-distribution was permitted by either side. Beginning about 2 p.m., the procompany rally lasted about 90–120 minutes and consisted of the following. About 35–40 persons from the human relations department and from the ranks of Respondent's managers and supervisors, all rounded up by Wright, lined both sides of the sidewalk leading from the street. Wearing T-shirts and hats clearly conveying their procompany message along with their normal attire, the participants were instructed to convey an upbeat positive message of ''Team Hilton, Vote No'' and all or most did just that. There were banners and signs over the employee entrance reading, ''Team Hilton,'' there was loud music, dancing, ''high-fives,'' and clapping by the participants, particularly as employees reported for the afternoon shift beginning in some cases at 3 p.m.

Some of the employees walking through the lines had their own distinctive attire, consisting of prounion caps, buttons, and T-shirts clearly conveying their message. Just across the street from this rally was an RV used by union representatives and containing its own prounion signs and banners.

There is a slight difference of opinion as to what effect this rally had on employees reporting for work. According to Michael Pieti, a union representative from Portland, who testified as a General Counsel witness, an unidentified female employee was willing to pass through the lines only with the reassurance of a security guard. He also described another woman wearing a Carpenters' T-shirt which allegedly caused the crowd to chant, ''No No No.'' Amid this clamor and with Pieti watching from the RV several feet away, he claimed the ability to discern one chanter switch from ''No'' to ''Bull-shit! Bull-shit,'' as a prounion employee walked through the line. No one else heard this and Respondent called its own witnesses who were equally credible including Robin Nichols, hotel credit manager, Kimberly Catlin, a secretary from the human relations department, and Andrena Arreygul, employee services manager, and of course, Wright, all denying that any negative comments were made. The rally ended when several representatives of the CWA began to appear, infiltrating the ranks of Respondent's employees and ''getting in their face.'' Upon observing this turn of events, Wright and Bennett agreed that the time had come to end the rally and bring the participants back into the hotel, which is exactly what they did.

I begin my analysis with the earlier union rally which was held at the specific request of the Carpenters (fiMDBUfl*ERR17*fiMDNMflTr. ly this is a factor by which Respondent's own counter-rally must be judged. More importantly, I find no express nor implied threats nor other coercion which reasonably could be perceived by employees as they passed through the line. It is not surprising that all of the witnesses to this event were participants and not employees on their way to work. To put the matter in perspective, I note by way of summary where a group of supervisors and managers and a few nonbargaining unit clericals from human relations, all familiar faces to the employees, and all or most dressed with procompany insignia, lined up on either side of the sidewalk, at the end of a hard fought campaign, behaving in the way I have described, did not violate Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl* when I place this event in the context of numerous other unfair labor practices, I do not see the violation and I am not surprised to note that neither side has cited applicable cases. For the reasons stated, I will recommend that this allegation be dismissed.[21] Cf. *Brotech Corp.*, 315 NLRB 1014 (fiMDBUfl*ERR17*fiMD

[19] In light of my findings, it is immaterial that Respondent's alleged rule was evenly enforced against procompany employees.

[20] During the rebuttal phase of the case, the last available witness was finished about midmorning on Wednesday, August 17, 1994. This was followed by a review of the extensive exhibits which took us close to lunch. I requested from union counsel an offer of proof regarding one last witness who could not be present until the following morning. Although the record will speak for itself, it appears that the missing witness was an attorney from Portland, Oregon, employed by the Union, who was present at the time and place in question and observed Respondent's election day rally. I found that the testimony regarding what happened was cumulative and not critical to the question whether this company activity violated the Act. Exercising my discretion, I required the Union to rest and I closed the record.

[21] I note for the record that I watched the videotape contained in the record (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 11)fiMDBUfl*ERR17*fiMDNMfl. Th

dd. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMfldd)fiMDBUfl*ERR17*fiMDNMfl*

It is alleged here that on October 25, Santo, Wong, and Rupple engaged in surveillance of James Adams, a waiter. By the time Adams testified as a General Counsel witness, he had left Respondent to work in the medical facility at the Northern Nevada Correctional Center. Before that, Adams worked as a waiter at Respondent's Steak House between June 1988 to mid-November. On the night in question, a Monday, Adams was working the swing shift between 3:30–11 p.m. Of the eight waiters, five were wearing ''Vote No'' buttons and three including Adams were not wearing any buttons. About 7 p.m., Santo, Gonzales, and Wong came in for dinner and were later joined by Ward Rupple. According to Adams, Santo observed Adams for about 2-1/2 hours while he had his dinner with his companions. A possible motive for Santo's alleged actions, in addition to the absence of Adams' vote no button, relates to a meeting about a week before, with John Armentrout and the ''front of the house'' staff. Armentrout, the food and beverage director, purported to convey information to employee detrimental to the Union and Adams publicly challenged the information. For example, Adams pointed out that a sizable loan reflected on the Carpenters' tax records had been reported repaid elsewhere on the same return used by Armentrout.

Chris Cochran, the maitre 'd, on the night in question seated Santo and his party that night. Cochran, who testified for Respondent, is also the manager of the restaurant and an employee on the property since 1978. Cochran proposed a certain table, but Santo requested a different table which was located in a quiet section of the hotel so he could hold a meeting while having dinner. The view of the restaurant from the table where Santo had dinner was poor, while the table that Santo rejected because it was not in a quiet area had a better view of the restaurant area. According to Adams, he complained to Cochran that Santo was staring at him, and Cochran allegedly agreed. In his testimony, Cochran agreed that Adams had complained to him, but told Adams that he was not being realistic.

As a matter of credibility, I do not believe that Santo was observing Adams in any way to violate the Act and I credit Santo's testimony on this point. I also credit Cochran's denial that Santo was staring at Adams. This was just a few days before the election and Santo was working long hours. I see no point to Santo having dinner with three other people and staring at a prounion waiter. While it is possible that, Adams felt he was being starred at—he quit his job in part because of the pressure of dealing with management, there is no credible evidence that Santo in fact was watching Adams. It is hard to believe that a waiter in a busy restaurant would even be aware of someone continuously watching

fully described by witnesses. The first segment shows the union rally—such as it was, and the second shows the hotel rally—much more structured and organized. Both segments are incomplete. The sidewalk space between the two lines of managers is about 3 to 5 feet. Participants were dressed as described above. I observed the clapping, the dancing, and high-fives as employees reported for work. Balloons were much in evidence, occasionally being distributed to young children, ages 3–5 years, as they walked with their parents through the line. I heard none of the negative comments described by some witnesses. In sum, nothing on this tape causes me to doubt my conclusion that this allegation should be dismissed.

the hotel's general manager. In any event, I will recommend dismissal of this allegation.

ee. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMfldd)fiMDBUfl**

Here, it is claimed that on October 27, Cochran threatened Adams with unspecified reprisals if Adams did not show open support for the hotel. According to Adams, Cochran told him that he spoke to Santo on the night in question and that things did not look good for Adams if he did not wear a ''Vote No'' button and reflect an antiunion attitude. Then Cochran said Santo was attempting to pressure Adams by using Cochran, and the latter could not let his friendship get in the way as he had a job to do.

In his testimony, Cochran noted that he was friendly with Adams and even knows Adams' wife and son. Two weeks before Adams testified, Adams stopped at Cochran's home to visit. Cochran was aware of Adams' prounion views and the two had discussed the union campaign in the past. Cochran denied making the comments attributed to him by Adams and again I credit Cochran. Since Adams was one of three waiters not wearing a ''Vote No'' button, it is hard to see why Santo directed Cochran to single Adams out for a warning. I do not believe Adams on this point and I will recommend the allegation be dismissed.

ff. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflee)fiMDBUfl**

This allegation also deals with Adams' claim of harassment by Cochran, because of the former's prounion views. On October 28, according to Adams, he worked on the opening team (fiMDBUfl*ERR17*fiMDNMflCaptain Adams, back man and bus boy erally but not always, the opening team gets to go home first. Notwithstanding this frequent practice, Cochran seated a party in Adams' area after 10 p.m., thus causing Adams' team to work later than Adams felt they otherwise would have. According to Cochran, Adams averaged a request to leave early about once per week, more than any other waiter (fiMDBUfl*ERR17*fiMDNMflthis request is called relinquishing a table)fiMDB was friendly with Adams and knew Adams worked a second job at American Airlines, Cochran usually acceded to his request. On October 28, Cochran testified, the last party was seated about 9:30 p.m. and Adams made no request to relinquish the table, as he had in the past when he desired to leave early.

Again, I will recommend dismissal of this allegation. As the General Counsel acknowledges in his brief, page 80, footnote 80, it is not even clear that Cochran was responsible for seating the late party in Adams' section. Beyond that, the other members of Adams' team did not testify, particularly on the question of how much additional money was earned from the late party (fiMDBUfl*ERR17*fiMDNMflteam members generally spl For all the above reasons, this allegation has not been proven.[22]

gg. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflff)fiMDBUfl**

On November 2, Ron Maderios, an assistant banquet manager, asked part-time banquet server Sheri Kemp how she in-

[22] In recommending dismissal of these allegations, I am aware that Cochran consulted with Santo as to how Adams and other subordinates were expected to vote. Since Cochran and Adams were friends, Cochran knew exactly how Adams felt and that any attempt to change Adams' views would be an exercise in futility.

tended to vote. Kemp replied by saying, ''[Y]ou know better than to ask a question like that Maderios said, ''I know, but I still want to know, how are you going to vote.'' To this, Kemp answered, ''[S]he was still considering the information.'' Maderios then concluded the conversation by discussing certain negative experiences his father had while a member of the Union.

Kemp's testimony is undisputed as Maderios never testified. There is no evidence she was an open and active supporter and I find the interrogation violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)6MDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl the Act.

hh. *Paragraph 6(fiMDBUfl*ERR17*fiMDNMflaa)fiMDBUfl*ERR17*fiMDNMfl*

It is alleged that in late June or early July, Supervisor Mark Smith interrogated an employee about his union membership. To support this allegation, the Union called Paul Smith (fiMDBUfl*ERR17*fiMDNMflno relation)fiMDBUfl*ERR17*fiMDNMfl, who worked for Respondent as a room service waiter between June 26 and April 15, 1994, when he quit for economic reasons.

According to Paul Smith, he spoke to Mark Smith, the room services manager, several times about union matters. In one conversation in Mark Smith's office, Mark Smith asked Paul Smith how he felt regarding the Union and unions in general. When Paul Smith gave a negative reply, Mark Smith asked Paul Smith to assist him in talking to other employees about his antiunion philosophy.

According to Mark Smith, Respondent's witness and employee on the property for 11 years, he admitted speaking to Paul Smith, but testified Paul Smith initiated the conversation, saying he had a lot of knowledge regarding unions from his experience working in New York and he offered to help Mark Smith to get his points across to employees. Mark Smith agreed to this offer telling Paul Smith that he should feel free to talk to any employees on his break.

I credit Paul Smith regarding only the first conversation he had with Mark Smith. I agree with Respondent that Paul Smith came across in his testimony as a salesman (fiMDBUfl*ERR17*fiMDNMflbuster)6MDBUfl*ERR17*fiMDNMfl and after his first conversation, he may well have attempted to curry favor with his supervisor. But there had to be a first question in the first conversation to break the ice, and for each participant to indicate where he was coming from. When Mark Smith asked Paul Smith how he felt about unions, this violated the Act because at that time Paul Smith was merely a new employee who had not yet stated his preference.

ii. *Paragraphs 7(fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*ERR17*fiMDNMfl–(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fi*

I have already discussed in an earlier segment of the first complaint my views of Respondent's disparate application of its no-solicitation/no-distribution policy. In addition, I have alluded to the same subject in the Facts. Accordingly, extended discussion is not warranted. A brief additional discussion, however, is in order.

According to Santo, at some point toward the end of the campaign, the Respondent perceived that its message was not being communicated to many employees who did not speak or understand English. Accordingly, Santo and others initially planned to use supervisors fluent in Spanish, Chinese, and Tagalog for the purpose of translating Hughes' memos to those employees requiring the service. This concept expanded to include bargaining unit employees, most of whom volunteered to act as interpreters on behalf of management, primarily because they were not disposed to the Union. The concept further expanded to include services well beyond merely translating Hughes' memos to flat out campaigning for Respondent during worktime—both for the campaigners' worktime and the listeners. That is, employees campaigning for Respondent gave coworkers reasons to vote for Respondent and answered coworkers questions in a way calculated to achieve that end.

The employees who participated in this activity for 1–2 weeks in late October before the election included Lillian Tellez (fiMDBUfl*ERR17*fiMDNMfla/k/a Maldanado)fiMDBUfl*ERR17*fiMD years on the property. Testifying as a witness for the Union, Tellez explained that she was openly procompany and was asked by her supervisor, Mooney, to campaign for the Company by talking to Spanish-speaking coworkers. Accompanied by a supervisor at the front desk, named Esther Vallardes, Tellez went to housekeeping, public area housekeeping, the laundry, and the kitchen, whereever there were Spanish-speaking employees eligible to vote, and ultimately spoke to about 100 employees.

Other employees also campaigned for Respondent during worktime. Gloria Cordova, for example, is a Spanish-speaking front desk agent with 10 years on the property, who was asked by a front desk supervisor named Laura Vides, if she desired to help translate for Spanish employees. For about a week before the election, she campaigned for Respondent on her worktime.

Still another employee from the front desk with 7 years on the property was George Alvendia, an employee fluent in Tagalog (fiMDBUfl*ERR17*fiMDNMflFilipino)fiMDBUfl*ERR17*fiMDNMfl, wh spoken union opponent, Alvendia volunteered to his Supervisor Vides to help out as an interpreter. He was admonished, as were other employees doing this work, not to coerce employees, but to ask them how they intended to vote and to avoid arguments.

Josie Pasco, a security officer, who was not eligible to vote, and who has worked on the property for 14 years, also volunteered. As she explained in her testimony as a union witness, she is a company person and opposed to the Union. Of Filipino descent, Pasco contacted her supervisor, Dave Bennett, to tell him of her interest, and she was ultimately allowed to campaign for the Respondent, in some cases, working as a team with Alvendia.

Still another employee named Carlos Vides, also volunteered as he was opposed to the Union and concerned that Respondent's message was not getting through. This witness, married to Supervisor Laura Vides, is a convention porter with 12 years on the property.

Finally, an employee named My Duong, who did not testify, spoke on worktime to Chinese and Vietnamese employees about the alleged advantages of defeating the Union.

All or most of the employees involved in this activity were initially directed by their supervisors to Rosa Kelly, convention services manager, who did not testify. Of Filipino descent, Kelly acted as coordinator and scheduler, hosting meetings with participating employees so they could be told what to say, clearing their activities with affected supervisors, and generally making certain that all departments and shifts with non-English speaking employees were covered.

[23] The General Counsel's motion, Br. 84, fn. 85, to withdraw par. 7(fiMDBUfl*ERR17*fiMDNMfle)fiMDBUfl*ERR17*fiMDNMfl in Case 32-CA-13602 is granted.

At the conclusion of the campaign, Santo sent letters of gratitude to all or most participating employees (fiMDBUfl*ERR17*fiMDNMflExhs. 35, 40)fiMDBUfl*ERR17*fiMDNMfl. Another reward was the [illegible] hours ''worked'' by these employees campaigning for the Respondent on worktime.

Of course, those employees who were not campaigning during worktime did not like it, because they had to work harder to make up for their missing coworkers. For example, the General Counsel called Kyle Halverson, a front desk agent with 5-1/2 years on the property. Unlike other employees who kept their opinions to themselves, Halverson complained to Supervisor Kent Vaughn. On October 25, she told Vaughn that she had to work twice as hard to make up for the missing employees. ''That's not fair,'' she added, because if she were against the Union, she could go upstairs and campaign too, but because she was for the Union, ''I'm screwed, right.'' To this Vaughn gave no answer. There was no secret among remaining employees such as Halverson, as to why the missing employees did not have to do their regular work. The record is replete with examples of the procompany employees telling their coworkers what they were doing.

In conclusion, I note the frequent cross-examination of supervisors by Sears on the subject of procompany employees campaigning on worktime. Sears asked many of the supervisors if prounion employees would have been released from their jobs, then paid their normal salaries, including overtime where applicable, in order to campaign around the Hotel for the Union. To this question, Mooney answered, ''Not normally.'' Then contradicting earlier testimony that she released Tellez at Santo's request so she could interpret information in connection with the campaign for the union election (fiMDBUfl*ERR17*fiMDNMflTr. 1776)fiMDBUfl*ERR17*fiMDNMfl, Mooney testified moments later, ''I don't know what she was doing. I just released her.'' (fiMDBUfl*ERR17*fiMDNMflTr. 1777)fiMDBUfl*ERR17*fiMDNMfl Supervisor Lane had no hesitation to say that even assuming that the procompany employees were only translating documents for non-English-speaking employees—an assumption rebutted by the evidence, no bilingual prounion employee would have been allowed to perform the same task on company time, because it would have violated Respondent's no-solicitation policy (fiMDBUfl*ERR17*fiMDNMflTr. 2141–2142)fiMDBUfl*ERR17*fiMDNMfl. Even Santo, general manager of the hotel, had this question put to him and gave this answer:

> Q. And isn't it true that if employees who were prounion had engaged in essentially identical activities on company time in order to promote the Union [i.e. canvassing various departments of the Hotel] that would have constituted a violation of the no-solicitation policy, wouldn't it?
>
> A. That's correct [Tr. 1650].

In considering the issue presented, I begin with *St. Francis Hospital*, supra, 263 NLRB at 835. In that case, the Board explained why it was rejecting the administrative law judge's imposition of an equal access remedy:

> First, no-solicitation, no-distribution rules are not binding upon employers. *NLRB v. United Steelworkers of America, CIO [Nutone, Incorporated]*, 357 U.S. 357, 362 (fiMDBUfl*ERR17*fiMDNMfl1958)fiMDBUfl*ERR17*fiMDNMfl. As the Supreme Court explained in that case an employer's right to engage in noncoercive, antiunion solicitation is ''protected by the . . . 'employer free speech' provision of 8(fiMDBUfl*ERR17*fiMDNMflc)fiMDB nothing in the law . . . Ulogic limits this right of an employer to discuss with employees only in nonwork areas on the employees' breaktimes.
>
> Moreover, a no-solicitation, no-distribution rule may lawfully be used to limit the access of nonemployee organizers to employees as long as it is applied in a nondiscriminatory manner and the union has other reasonable means of communication with employees. *NLRB v. Babcock & Wilcox Co*., 351 U.S. 105 (fiMDBUfl*ERR17*fiMDNMfl1956 employer may lawfully campaign against a union during employees' nonbreaktime and in working areas even though neither employees nor nonemployee organizers may do so. In such a case, an employer has not unlawfully enforced its no-solicitation, no-distribution rule in a disparate manner nor unlawfully ''violated'' its rule. Accordingly, under these circumstances, and where, as here, there was no evidence adduced to show that the Union did not have reasonable access to employees, or that the Hospital unlawfully enforced its rules to limit access to its employees by nonemployee organizers or to curtail the activities of prounion employees while encouraging the activities of antiunion employees, we see no justification for imposition of an equal access remedy. We shall therefore not adopt this portion of the Administrative Law Judge's recommended Order.

I find this authority is of no benefit to Respondent. Unlike *St. Francis Hopsital*, supra, the facts of the instant case reflect that Respondent curtailed the activities of prounion employees while encouraging the activities of antiunion employees. See *Tualatin Plaza Hotel & Casino*, 310 NLRB 1162, 1168 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl. Accor (fiMDBUfl*ERR17*fiMDNMflBr. 89)fiMDBUfl*ERR17*fiMDNMfl ''By allow no-solicitation rule, while at the same time, enforcing the rule against pro-union employee, Respondent discriminatorily enforced its facially valid rule in violation of Section 8(fiMDBUfl*ERR17*fiM of the Act.'' *Blue Bird Body Co*., 251 NLRB 1481 fn. 2, 1485 (fiMDBUfl*ERR17*fiMDNMfl1980)fiMDBUfl*ERR17*fiMDNMfl; and *E* 850 (fiMDBUfl*ERR17*fiMDNMfl1992)fiMDBUfl*ERR17*fiMDNMfl. I furthe soliciting Tellez and Cordova to participate in its antiunion campaign Respondent also violated Section 8(fiMDBUfl*ERR17*fiMDNMfla Act.

jj. *Paragraphs 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ER*

The issue here is whether a Respondent handbill distributed to employees on November 1 violated the Act. The handbill in question found in the record as General Counsel's Exhibit 23 is too long to reproduce in its entirety. The document purports to compare what employees would receive if they vote for the Union, ''Promises, Promises, Promises'' versus what employees would get if they vote no, ''employees would then be voting to keep what they already have and see it improve as the Hotel grows.'' The flyer goes on to compare ''Guaranteed Reno Hilton Benefits,'' listing a raft of benefits such as medical, dental, vision plans, a retirement program, etc., versus ''Guaranteed Carpenters Benefits,'' listing [illegible] Noting, As the Supreme Court explained in [illegible] bluster and hyperbole of the campaign flyer must be measured against a paragraph found at page 5 of Respondent's

44-page employee handbook (fiMDBUfl*ERR17*fiMDNMflU. Exh. 4(fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl) which contains a disclaimer that follows:

> Neither this handbook nor any other work rule, policy, or procedure, written or oral, constitutes a contract of employment. No statement, rule, policy or procedure in this Handbook otherwise is intended to be an expressed or implied promise, guarantee or commitment with regard to the duration or term of employment, wages, benefits, or any other term or condition of employment.

At page 83 of his brief, the General Counsel contends that Respondent's distribution of the handbill violated Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl of the Act because employee handbook, the guarantee contained in the handbill constituted a promise of a new benefit if the employees rejected the Union. The General Counsel's argument is a stretch to say the least. I reject it and agree with Respondent (fiMDBUfl*ERR17*fiMDNMflBr. 113)fiMDBUfl*ERR17*fiMDNMfl there is no promise in the flyer that Respondent will never change existing employee benefits; it only promises that by defeating the Union, employees would get to keep existing benefits for a period of time (fiMDBUfl*ERR17*fiMDNMfl committed to the total discretion of the Employer)fiMDBUfl*ERR17*fiMDNMfl. In sum, the ''promise'' contained in the flyer is illusory and worth as much as any promise made in any political campaign. All persons, including employees of the hotel, recognizes these promises for what they are. I will recommend this allegation be dismissed.

4. The objections

The record contains 61 objections filed by the Union (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 2(fiMDBUfl*ERR17*fiMDNMflg)fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17*fiMDNMfl. Several of these objections were withdrawn prior to hearing and several are identical to unfair labor practice allegations covered in the prior segment of this decision (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 3(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl, pp. 8–9)fiMDBUfl*ERR17*fiMDNMfl was withdrawn during the hearing (fiMDBUfl*ERR17*fiMDNMflTr. 1092)fiMDBUfl*ERR17*fiMDNMfl. According to the Supplemental Decision, Notice of Hearing and Order Consolidating Cases (fiMDBUfl*ERR17*fiMDNMflG.C. Exh. 3(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl)fiMDBUfl*ERR17 14, 15, 18, 26, 28, 29, 31, 32, 36, 38, 39, 58, and 59. Closer scrutiny of the record, however, requires that this list be pared down further. I find that Objections 14, 15, 31, and 36 also parallel unfair labor practice allegations and it will not be necessary to discuss them further. As to Objection 18 (fiMDBUfl*ERR17*fiMDNMflhotel told employees that popular supervisors will lose their jobs or otherwise suffer reprisals if employees failed to defeat the Union)fiMDBUfl*ERR17*fiMDNMfl; Objection 29 (fiMDBUfl*ERR17*fiMDNMfl hotel discriminated by requiring prounion employees to work longer and less desirable hours)fiMDBUfl*ERR17*fiMDNMfl; and Objection 58 (fiMDBUfl*ERR17*fiMDNMfl hotel interfered with distribution of union literature by complaining to the local police, no evidence was introduced regarding those objections and I will recommend they be overruled. Before turning to the remaining six objections, some preliminary observations are in order.

The unfair labor practices found above track some of the objections filed by the Union. The Board has held that conduct violative of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl interferes with the exercise of a free and untrammeled choice in an election. *Del Tex Optical Co.*, 137 NLRB 1782, 1786 (fiMDBUfl*ERR17*fiMDNMfl1962)fiMDBUfl*ERR17*fiMDNMfl, cited in *Gonzales Packing Co.*, supra, 304 NLRB at 805. *Chromally American Corp.*, 245 NLRB 934 fn. 1 (fiMDBUfl*ERR17*fiMDNMfl1979)fiMDBUfl*ERR17*fiMDNMfl. Accordingly *Medical Center of Ocean County*, 315 NLRB 1150 (fiMDBUfl*ERR17*fiMD

As to the remaining objections, the Union has the burden of showing by specific evidence at the hearing that (fiMDBUfl*ERR17*fiMD proprieties occurred, and (fiMDBUfl*ERR17*fiMDNMfl2)fiMDBUfl*ERR17*fiM ployees' exercise of free choice to such an extent materially to have affected the election results. *Bell Foundry Co. v. NLRB*, 827 F.2d 1340, 1343 (fiMDBUfl*ERR17*fiMDNMfl9th Cir. 1987)fiMD the specific remaining objections.

a. *Objection 26*

Objection 26 states:

> The Employer unlawfully told employees that they would be blacklisted from any other employment in the hotel and casino industry in the Reno area if the Union won the election.

In mid- to late October, Sherri Kemp attended a meeting of banquet servers and other employees which was addressed by John Armentrout, Respondent's vice president for food and beverages and Hilton employee for 14 years. Among other remarks made by Armentrout to Kemp and the others was that if the Union came in, Respondent's part-time banquet servers who work part-time for other hotels as well, might find it difficult to work as much for these other hotels, because the other managers would not want them influencing their employees. In his testimony, Armentrout essentially admitted making the remarks attributed to him. He explained that his counterparts from other hotels had been calling him to express concern about the union campaign and to report their bosses had allegedly given orders not to hire any part-time banquet servers who also work at Respondent until the union issue had been resolved. Armentrout explained the thinking behind the warning he conveyed to Kemp and the others: ''Reno is pretty much of a non-union town . . . and most of the operators in town want to stay that way. . . . So they didn't want to take a chance of having individuals working in their operations that may be sympathetic to the causes'' (fiMDBUfl*ERR17*fiMDNMflTr. 1917–1918)fiMDBUfl*ERR17*fiMD would have expressed the very same concern if the organizing campaign had been at a different hotel, because he possibly would have felt that his boss, Hughes, would not have wanted him to hire part-time people associated with a hotel where the Union was trying to organize a campaign (fiMDBUfl*ERR17*fi 1918–1919)fiMDBUfl*ERR17*fiMDNMfl.

In *D'Amico v. U.S. Service Industries*, 147 LRRM 2796, 2807 (fiMDBUfl*ERR17*fiMDNMfliD.C. Cir. 1994)fiMDBUfl*ERR17*fiMDNM submitted by the General Counsel in support of its petition, a letter from Respondent's vice president to the Wall Street Journal, stating in part, ''Washington, D.C. is not a union city and never will be one for janitors.'' Based on this and other evidence, the court issued the injunction. So too in the instant case, I will sustain the objection to Armentrout's statements made to bargaining unit employees threatening loss of employment opportunities if the Union was not defeated. See *J. T. Slocomb Co.*, 314 NLRB 231 (fiMDBUfl*ERR17*fiMDNMfl19

[24] Most of the unfair labor practices found above occurred during so-called critical period, the time between the filing of the petition, here, June 26, and the date of the election, here, November 4. *Ideal Electric Co. & Mfg.*, 134 NLRB 1275 (fiMDBUfl*ERR17*fiMDNMfl1961)fiMDBUfl*E *& Rubber Co.*, 138 NLRB 453 (fiMDBUfl*ERR17*fiMDNMfl1962)fiMDBUfl*ERR17*fiM

b. *Objection 28*

Objection 28 states:

> The Employer unlawfully created an atmosphere of fear and violence by falsely and slanderously telling employees that union officials had vandalized automobiles owned by antiunion employees.

Much evidence was presented regarding alleged vandalism of cars during the union campaign. For example, Trevino testified that on October 22, Supervisor Sandy Warbington told Trevino and other employees that cars belonging to procompany employees had been vandalized and that such acts would not be tolerated. About the same time, Supervisor Dean Lane repeated the same message to employee Brian Taylor. When Taylor, a strong union supporter, said this was a bunch of garbage, Lane said he had evidence which he would produce at the right time. In his testimony, Lane produced no credible evidence, but instead testified it was a normal occurrence to have vandalized cars in the parking lots, and when a large concert occurs, the incidents go up. He also claimed that it was Taylor who raised the issue of vandalized cars and that Lane never attributed the damage to the Union or union supporters. Without hesitation, I credit Taylor's version of the conversation.

According to employee Vevia Ablang, with respect to a meeting of employees on October 27, Santo said that union people were messing with cars of the antiunion people. In his testimony, Santo admitted discussing vandalized cars, but denied attributing the damage to union supporters. Instead, one of the employees at the meeting said union supporters were responsible. Although Santo was supported by Watts in her testimony, I credit Ablang's version. On cross-examination, Santo conceded some vandalism against cars was a common occurrence.

Finally, for all the complaints by company officials about vandalized cars, the company official with the most knowledge about the subject, Dave Bennett, security chief, testified that in mid-October about three–four cars owned by hotel employees had been vandalized (fiMDBUfl*ERR17*fiMDNMfl i.e., "keyed" to cause scratches in the finish)fiMDBUfl*ERR17*fiMDNMfl. Bennett could not remember if the police were notified, but his investigation showed that the owners all worked in the housekeeping department and that they did not share any common background or points of view (fiMDBUfl*ERR17*fiMDNMflTr. 2363–2364)fiMDBUfl*ERR17*fiMDNMfl.

Based on the facts recited above, I sustain the Union's objection and find Respondent was responsible for undermining the Union by spreading and perhaps instigating unfounded rumors.

c. *Objection 32*

Objection 32 states:

> The Employer unlawfully and knowingly provided to the [Board] an inaccurate and incomplete list of the names and addresses of employees eligible to vote in the election known as the Excelsior List, in order to obstruct the conduct of the election and interfere with or prevent communication between employees and the Union.

The *Excelsior* list[25] is contained in the record (fiMDBUfl*ERR17*fiMDN
22)fiMDBUfl*ERR17*fiMDNMfl. According to union agent and union w
Pinckard, he picked up the list from the Board's Regional Office in Oakland on October 12. About 13 other union officials had been brought into Reno to contact listed employees in order to campaign for the Union. Many of the names consisted of first initials instead of full names and omitted apartment numbers in some cases. In those cases where there were more than one employee with the same name, or where the listed employee lived in a large apartment complex, particularly a gated community with guards at the front gate, union agents were impeded in their efforts to contact listed employees.

Based on a recent Board decision, I sustain the Union's objection. See *North Macon Health Care Facility*, 315 NLRB 359 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17*fiMDNMfl. clude employees' first names on the *Excelsior* list was deemed sufficient to merit a new election. Within the spirit of that case, I find failure to include apartment numbers, where reasonably available, renders the election equally deficient.[26]

d. *Objection 38*

Objection 38 states:

> The Employer unlawfullly attempted to interfere with the conduct of the election by appointing as an election observer a person closely identified with the Employer.

Tellez and the other nonsupervisory employees who were permitted to campaign around the hotel on worktime were acting as agents of the Employer. See *Aluf Plastics*, 314 NLRB 706 fn. 1 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17*fiMD
1036 (fiMDBUfl*ERR17*fiMDNMfl1988)fiMDBUfl*ERR17*fiMDNMfl. Board
sons closely identified with the employer. *Watkins Brick Co*.,
107 NLRB 500 (fiMDBUfl*ERR17*fiMDNMfl1953)fiMDBUfl*ERR17*fiMDNM

I find that the instant objection is governed by the case of *B-P Custom Building Products*, 251 NLRB 1337 (fiMDBUfl*ERR17*fiMDNM that case, a nonsupervisory agent of the employer relayed information from management to employees and had been placed by management in a strategic position where employees could reasonably believe he spoke on their behalf (fiMDBUfl*ERR17*fiMI 1338)fiMDBUfl*ERR17*fiMDNMfl. In the instant case, while Tellez was excus normal duties to act as a management surrogate or agent, employees could reasonably believe she spoke on management's behalf. When the election was over, Santo ratified her activities and that of the others by sending them letters of gratitude. Accordingly, it was improper for her to function as Respondent's election observer in light of her status as Respondent's agent. *B-P Custom Building Products*, supra at 1338. I sustain the Union's objection.

e. *Objection 39*

Objection 39 states:

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[25] *Excelsior Underwear*, 156 NLRB 1236 (fiMDBUfl*ERR17*fiMDNMfl1966)fiMDBUf

[26] I decline to consider the question of the alleged late-filed *Excelsior* list, because that issue was not the subject of a separate objection and because I am not aware how the issue is reasonably encompassed within the instant objection, even though it may have been litigated.

> The Employer unlawfully attempted to interfere with the conduct of the election by posting an anti-union banner so as to cover a portion of the official [NLRB] Notice of Election, and otherwise covering portions of the text of the Notice.

The evidence shows that about 10 days before the election there were three identical notices posted in three separate locations around the hotel in three languages (fiMDBUfl*ERR17*fiMDNMflEnglish, Spanish, and Chinese)fiMDBUfl*ERR17*fiMDNMfl (fiMDBUfl*ERR17*fiMDNMflR. Exhs. 17(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl were near the timeclock in the grey area of the hotel, near the room service department, and in the employee cafeteria. On November 3, the Board agent in charge of the election, together with representatives of both sides toured the area to inspect the notices and to prepare for the election on the following day.

The Union presented evidence that in two of the locked glass cases, the notices were obscured because the cases were not large enough. The notices were posted by Sullivan who acknowledged a minor problem with fitting the notices into the cases. He testified however that by carefully folding the notices in a certain way, they were all readable by employees. I credit this testimony.[27]

As to the notices posted in the cafeteria, I find, and all agree, that a portion of the notices were obscured by an employer campaign banner. According to union witness Edgar Field, assistant field director of the Carpenters and union representative on the November 3 tour, the banner was hung in the cafeteria in such a way so one side of the notice was not visible. According to Wright, the English notice was not obstructed at all, however, the other two notices were covered 2–3 inches until Wright removed the offending banner on the afternoon of November 3.

In light of the above, I find there has been substantial compliance with the Board's policies and I will recommend that this objection be overruled.

f. *Objection 59*

Objection 59 states:

> The Employer unlawfully interfered with, restrained and coerced employees in the exercise of their rights under the [Act] by threatening, harassing and openly maintaining surveillance of pro-union customers and guests.

The evidence in this segment may be divided essentially into three parts: what Sears did; what Respondent did to Sears; and my conclusions. First, on October 20 and again on October 26, Sears went to the executive offices for the ostensible purpose of delivering letters to Hughes (fiMDBUfl*ERR17*fiMDNMfl Exhs. 11, 14)fiMDBUfl*ERR17*fiMDNMfl. The gist of these letters was a complaint about Respondent's interference with the Union's campaign rights. Each time, Sears went to the hotel, he arrived about noontime, claimed surprise to find the executive offices somewhat deserted, and then wandered around the area for the ostensible purpose of attempting to find Hughes' office. On his October 26 tour around the executive offices, Sears was accompanied by a second union attorney named Craig Rosenberg who did not testify. In each case, Sears never did deliver the letters to Hughes, but instead delivered them to others (fiMDBUfl*ERR17*fiMDNMflBennett, Santo's secretary)fiMDBUfl*ERR17 deliver the letters to Hughes.

After delivering the second letter, Sears was followed down an escalator by two uniformed security guards and met at the bottom by two others. One said to Sears, ''[O]ur boss wants to make sure you find your way to the nearest exit.'' During both visits to the executive offices, Sears was wearing a bright red windbreak with a Carpenters logo on the back.

On November 2, Sears checked into the hotel for 3 nights, and that evening patronized the casino and met other union representatives in and around the Hotel. All were dressed in the distinctive red union windbreaker. At the end of the evening, as Sears waited for the elevator on his way up to his room, Bennett asked to see Sears' room key as proof he was a guest. Under protest, Sears showed his key,[28] but not satisfied, Bennett accompanied Sears to his room ''to make sure his key worked for his room'' (fiMDBUfl*ERR17*fiMDNMflthat is, a Bennett, Sears could have kept a key from his prior stay or found a key on the floor)fiMDBUfl*ERR17*fiMDNMfl. Bennett conceded tha not behaved in any unusual way and that it was not his practice to ask persons waiting for an elevator, if they were guests or to show their room keys. Bennett also testified that Sears was kept under surveillance by security cameras in the hotel and casino and his movements were tracked at all times while he was a paying guest of the hotel. Moreover, his photographs were secretly taken without his permission.

Sears was treated in the manner described above pursuant to the mid-October order of Santo, after he had been informed that Sears had been roaming around the executive offices and that union officials had harassed Jolly in the coffeeshop.[29] Essentially, Santo told Bennett that when Sears or other union officials came on the property, the security department was to keep an eye on them.

In light of the above, I begin my analysis by questioning the judgment of Sears for roaming around Respondent's executive offices under the guise of delivering an urgent letter. Nothing in either letter was so urgent that a messenger service could not have delivered them without raising the issues I see in Sears' behavior. Nor do I see why the letters could not have been left at the front desk with a request to give them to Hughes immediately. In sum, I find an arguable

[27] According to Wright, even though the notices could be read as they were in the case, the Board agent responded to the complaints of union representatives on November 3 and taped three additional notices in English, Spanish, and Chinese to the wall, near the timeclock and room service locations (fiMDBUfl*ERR17*fiMDNMflTr. 1490)fiMDBUfl*ERR17*fiMDNMfl. The Board agent's order to post additional notices on the wall is not probative evidence of any issue in this case, where the agent did not testify.

[28] The following morning, when Sears returned to his room, a security officer again asked to see his key.

[29] A employee about Linda Jolly testified that she worked as a food server in Respondent's coffeeshop and was employed on the property for 6 years. During one summer's day, she served food to a table of four men, one of whom allegedly was a union official named Bashore, who did not testify. When she went to take their order, one of the men said they were her new union representatives. Jolly, a strong employer supporter, denied they were or would be her union representatives. Then one man put his hand under the table and asked Jolly if she wished to see his gun. Jolly reported the incident both to her Supervisor Formico and to Wright. The latter passed it along to Hughes and Santo and Respondent contends, Br. 134, that it provides some foundation for what happened to Sears. I assign it little weight for that purpose however.

provocation by Sears.[30] On the other hand, if Sears behaved in an overzealous manner, perhaps attempting to make a statement by his personal delivery of the letters, Respondent's punishment does not fit the crime. Asking Sears to produce his room key and then accompanying him to his room—when Bennett could have used his radio to verify Sears' status as a registered guest—if there was a bona fide question to begin with—constitutes pure harassment. Bennett, of course, was acting as Respondent's agent when he harassed Sears. *Southern Maryland Hospital Corp*., 293 NLRB 1209 (fiMDBUfl*ERR17*fiMDNMfl1989)fiMDBUfl*ERR17*fiMDNMfl. The assignment of Sears to the basket room and the maintaining of surveillance of his activities violates Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl of the Act. *Flamingo Hilton-Laughlin*, 314 NLRB 929, 936–937 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17*fiMDNMfl. The extraordinary security measures used against Sears, without any valid reason tends to interfere with, restrain, and coerce employees in the exercise of their rights guaranteed by Section 7 of the Act. Compare *Metal Industries*, 251 NLRB 1523 (fiMDBUfl*ERR17*fiMDNMfl1980)fiMDBUfl*ERR17*fiMDNMfl. For the same reasons, the taking of surveillance photographs of Sears without his knowledge or permission is an additional violation of Section 8(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl of the Act. *Colonial Haven Nursing Home*, 751 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBUfl*ERR17*fiMDNMfl; and *F. W. Woolworth Co*., 310 NLRB 1197 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl. Accordingly, I recommend that Objection 59 be sustained.

g. *Recommendation*

Based on the foregoing, I recommend that the Board overrule Objection 39, and that it sustain Objections 26, 28, 32, 38, and 59 and that the Board set aside the election in Case 32–RC–3720 and direct that a second election be conducted.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent, set forth in section IV, above, occurring in connection with the Respondent's operations described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. Respondent Reno Hilton Resorts Corporation d/b/a Reno Hilton is an employer engaged in commerce within the meaning of Section 2(fiMDBUfl*ERR17*fiMDNMfl6)fiMDBUfl*ERR17*fiMDNMfl and (fiMDBUfl*ERR17*fiMDNMfl7)fiMDBUfl*ERR17*fiMD

2. The Union, United Brotherhood of Carpenters, Western Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL–CIO is a labor organization within the meaning of Section 2(fiMDBUfl*ERR17*fiMDNMfl5)fiMDBUfl*ERR17*fiMDNMfl of the Act.

3. Respondent has violated Section 8(fiMDBUfl*ERR17*fiMDNMfl6)(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl committing the following acts:

(fiMDBUfl*ERR17*fiMDNMfla)fiMDBUfl*ERR17*fiMDNMfl By soliciting grievances from employees with explicit and implied promises to rectify them.

(fiMDBUfl*ERR17*fiMDNMflb)fiMDBUfl*ERR17*fiMDNMfl By interrogating employees about their attitudes toward the union and how they intended to vote in the election.

(fiMDBUfl*ERR17*fiMDNMflc)fiMDBUfl*ERR17*fiMDNMfl By directing employees to remove union insignia from their clothing.

(fiMDBUfl*ERR17*fiMDNMfld)fiMDBUfl*ERR17*fiMDNMfl By threatenin closed before the Union could come in.

(fiMDBUfl*ERR17*fiMDNMfle)fiMDBUfl*ERR17*fiMDNMfl By maintainin a no-solicitation/no-distribution policy.

(fiMDBUfl*ERR17*fiMDNMflf)fiMDBUfl*ERR17*fiMDNMfl By granting e paign.

(fiMDBUfl*ERR17*fiMDNMflg)fiMDBUfl*ERR17*fiMDNMfl By requiring e button or T-shirt as unlawful interrogation.

(fiMDBUfl*ERR17*fiMDNMflh)fiMDBUfl*ERR17*fiMDNMfl By telling em vote in the election.

(fiMDBUfl*ERR17*fiMDNMfli)fiMDBUfl*ERR17*fiMDNMfl By threatenin benefits, or unspecified reprisals, if they supported the Union.

(fiMDBUfl*ERR17*fiMDNMflj)fiMDBUfl*ERR17*fiMDNMfl By telling em they are showing disloyalty to supervisors and to the hotel.

(fiMDBUfl*ERR17*fiMDNMflk)fiMDBUfl*ERR17*fiMDNMfl By promising efits if the Union was defeated.

(fiMDBUfl*ERR17*fiMDNMfll)fiMDBUfl*ERR17*fiMDNMfl By creating th tivities were under surveillance.

(fiMDBUfl*ERR17*fiMDNMflm)fiMDBUfl*ERR17*fiMDNMfl By disparatel lishing quality action teams (fiMDBUfl*ERR17*fiMDNMflQATs)fiMDBUfl*E involving proposals from the QAT concerning subjects listed in Section 2(fiMDBUfl*ERR17*fiMDNMfl5)fiMDBUfl*ERR17*fiMDNMfl of th sideration of these proposals by management.

5. In Case 32–RC–3720, Objections 26, 28, 32, 28, and 59 are sustained.

6. Other than specifically found herein, Respondent has committed no other unfair labor practices.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

At the beginning of the case, the General Counsel announced that it was seeking certain extraordinary remedies, which he then described in detail. As authority for the requested extraordinary relief, the General Counsel cited *Sambo's Restaurant*, 247 NLRB 777 (fiMDBUfl*ERR17*fiMDNMfl1980)fiMD 794 (fiMDBUfl*ERR17*fiMDNMfl9th Cir. 1981)fiMDBUfl*ERR17*fiMDNMfl

In considering the General Counsel's request which is renewed in its brief, and joined in by the Union in its brief, I consider the following factors: the number and severity of unfair labor practices found which is considerably fewer than that alleged, and other arguments raised by Respondent.

The unfair labor practices committed by Respondent include interrogating employees on prohibited subjects, soliciting grievances with promises to remedy, promising benefits to employees or threatening loss of benefits depending on the outcome of the union election, establishment of quality action teams, and the disparate enforcement of its no-solicitation/no-distribution rule. All or most of the unfair labor practices involve the planning and participation of Respondent's highest officials such as Hughes, Santo, Lane, and Bradley. In light of the above, I find that Respondent has demonstrated a proclivity to violate the Act and has exhibited a general disregard for the employees' fundamental statutory rights. Accordingly, a broad remedial order is warranted. See *Hickmott Foods*, 242 NLRB 1357 (fiMDBUfl*ERR17*fiMDNMfl1979)fiMDBU *Services Industries*, 315 NLRB 285 (fiMDBUfl*ERR17*fiMDNMfl1994)fiMDBU

[30] I also question Respondent's lax security standards which permit an unauthorized person to enter the executive offices at noontime without restriction.

In comparing the facts of the instant case, however, to those in *Sambo's Restaurant*, supra, I am not inclined to grant all of the General Counsel's other requests for extraordinary relief since I cannot find that Respondent's unfair labor practices are so outrageous or pervasive as to justify all the relief sought. I recommend as follows:

(fiMDBUfl*ERR17*fiMDNMfl1)fiMDBUfl*ERR17*fiMDNMfl In addition to posting at its Reno, Nevada facility, copies of the attached notice, marked ''Appendix,''[31] mail a copy of the notice to each individual current employee[32] at his or her home address and to all employees on the payroll at the time the unfair labor practices were committed, and include a copy in appropriate company publications. All such notices, both mailed or posted, are to be signed personally by Ronald Hughes or Tony Santo;[33] (fiMDBUfl*ERR17*fiMDNMfl2)fiMDBUfl*ERR17*fiMDNMfl Upon request made within 1 year of the date of this decision, or within such addition time as the Board may grant, furnish the Union on a timely basis with the complete names and addresses of Respondent's current employees including apartment numbers where applicable.[34]

[Recommended Order omitted from publication.]

[31] The posted notices are to be published in English, Spanish, Chinese, and Tagalog.

[32] Throughout the remedy, by ''employee'' is meant bargaining unit employee.

[33] In *Three Sisters Sportwear Co*., 312 NLRB 853 (fiMDBUfl*ERR17*fiMDNMfl1993)fiMDBUfl*ERR17*fiMDNMfl, the Board modified a recommended order to provide that the named company official, at his option, either read the notice or be presented while the notice is read by a Board agent. I decline to order the notice be read at all, because Hughes' and Santo's conduct while serious, was not so serious as to require this remedy. If I erred in this respect, I would certainly include the option of having the Board agent read the notice while Hughes or Santo were present.

[34] I decline to recommend the other extraordinary relief requested by the General Counsel primarily because the level of unfair labor practices found does not justify that relief, but also because the Union has adequate alternative means of effective communications with employees. Furthermore, I cannot find that that relief is required to dissipate the effects of Respondent's unfair labor practices. If a broad order is granted and Respondent commits additional unfair labor practices prior to the second election, a bargaining order may be in order. Finally, in light of the above, it is unnecessary to determine if the case of *Lechmere Inc. v. NLRB*, 112 S.Ct. 841 (fiMDBUfl*ERR17*fiMDNM would restrict the Board's broad remedial power, *Fiberboard Corp. v. NLRB*, 379 U.S. 203, 216 (fiMDBUfl*ERR17*fiMDNMfl1964)fiMDBUfl*ERR17*fiM remedies. However, see *Three Sisters Sportswear Co*., supra, 312 NLRB at 853, a post-*Lechmere* case, where the Board affirmed special access remedies for the Union.